

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 303

UNITED STATES, APPELLANT,

vs.

VON'S GROCERY COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF CALIFORNIA

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[File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF CALIFORNIA,  
CENTRAL DIVISION**

Civil No. 336-60-WM

UNITED STATES OF AMERICA, Plaintiff,

v.

VON'S GROCERY COMPANY AND SHOPPING BAG FOOD STORES,  
Defendants.

COMPLAINT—Filed March 25, 1960

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this Civil Action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

**Jurisdiction and Venue**

1. This complaint is filed and this action instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended by the Act of December 29, 1950, c. 1184, 64 Stat. 1125, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of said Act.

2. Both defendants transact business and are found within the Southern District of California.

**Defendants**

3. Von's Grocery Company, hereinafter referred to as "Von," is made a defendant herein. Von, a corporation organized and existing under the laws of the State of Delaware, maintains its principal offices in Los Angeles, California.

4. Shopping Bag Food Stores, hereinafter referred to as "Shopping Bag," is made a defendant herein. Shopping Bag, a corporation organized and existing under the laws of the State of California, maintains its principal offices in El Monte, California.

### Trade and Commerce

5. There is a steady stream of commerce involved in the distribution of groceries and related products from producers located throughout the United States to consumers residing in the Los Angeles marketing area. Chains of supermarkets have become important factors in this flow of commerce. Such chains operate purchasing offices which are in contact with suppliers located throughout the United States to purchase and effect the shipment of substantial quantities of groceries and related products from producing facilities located in the various States to the chains' distribution centers and supermarkets in the Los Angeles area. Products shipped to the chains' distribution centers continue in the flow of commerce in trucks owned and operated by the chains to their supermarkets for distribution to the ultimate consumer.

6. In 1958 20 leading chains of supermarkets operating in the Los Angeles area purchased, distributed and sold groceries and related products having a retail value in excess of \$1.1 billion and accounted for more than 50% of all grocery sales in the area. These chains competed intensively with each other and with other corporations and firms engaged in the purchase, distribution and sale of groceries and related products in the Los Angeles area.

7. Von is one of the leading chains of supermarkets in the Los Angeles area. It was incorporated in Delaware in 1958 and is the successor of incorporated and unincorporated business entities which have been engaged in the purchase, distribution and sale of a complete line of groceries and related products since 1932.

8. In the 1959 fiscal year Von operated 28 complete supermarkets in the Los Angeles area which had total annual sales of more than \$85 million. All of Von's supermarkets are of the self-service, cash-and-carry type. The average annual sales of these supermarkets are in excess of \$3 million per store.

9. Von also owns and operates a modern distribution center in a 216,000 square foot building located on a 20-acre tract of land in the Los Angeles area. This distribution center provides facilities to receive and re-ship groceries and related products to Von's supermarkets throughout the Los Angeles area. Von owns and operates approximately 33 tractors and 39 trailers which it uses for transporting merchandise from the distribution center to its various supermarkets. In the course of its business Von purchases, receives and distributes for re-sale in its supermarkets a substantial volume of groceries and related products which are produced outside the State of California.

10. Shopping Bag is also one of the leading chains of supermarkets in the Los Angeles area. It has operated under its present name since 1947, and is the successor to incorporated and unincorporated business entities which have been engaged in the purchase, distribution and sale of a complete line of groceries and related products in the Los Angeles area since 1933. In the 1959 fiscal year Shopping Bag operated 38 complete supermarkets in the Los Angeles area which had total annual sales of over \$84 million. All of Shopping Bag's supermarkets are of the self-service, cash-and-carry type. The average annual sales of these supermarkets are more than \$2.1 million per store.

11. Shopping Bag also operates a substantial distribution center to receive and re-ship groceries and related products to its supermarkets. To facilitate distribution through its supermarkets of the products received at its distribution center, Shopping Bag owns and operates a fleet of trucks, trailers and automobiles comprising about 166 units in all. In the course of its business Shopping Bag purchases, receives and distributes for re-sale in its supermarkets a substantial volume of groceries and related products which are produced outside the State of California.

12. In dollar sales Von was the third largest retailer of groceries and related products in the Los Angeles area and Shopping Bag was the fifth largest in 1958. In terms of the total number of markets operated, Shopping Bag was the sixth largest and Von was eighth largest. Combined, Von and Shopping Bag, with approximately 8% of total grocery store sales, will be the second largest chain of supermarkets

in the Los Angeles area in terms of dollar sales and number of supermarkets.

#### Offense Charged

13. Under a merger agreement between Von and Shopping Bag, dated January 25, 1960, and effective March 28, 1960, all assets and properties of Shopping Bag will be transferred to Von and all outstanding Shopping Bag stock will be converted into Von common stock. This acquisition by Von of Shopping Bag's assets and properties will violate Section 7 of the Clayton Act in that the effect, with respect to the above-described trade and commerce, may be substantially to lessen competition or to tend to create a monopoly, among other ways, as follows:

(a) Actual and potential competition between Von and Shopping Bag in the purchase, distribution and sale of groceries and related products may be eliminated.

(b) Actual and potential competition generally in the purchase, distribution and sale of groceries and related products may be substantially lessened.

(c) Shopping Bag will be eliminated as a substantial independent competitive factor in the purchase, distribution and sale of groceries and related products.

(d) Von's competitive advantages over smaller sellers of groceries and related products may be enhanced to the detriment of actual and potential competition.

(e) Independent retailers of groceries and related products may be deprived of a fair opportunity to compete with the combined resources of Von and Shopping Bag.

(f) The number of competing entities in the Los Angeles area available to producers and wholesalers of groceries and related products will be lessened.

(g) Mergers and acquisition on the part of other chains of supermarkets in the Los Angeles area may be fostered, thus causing a further substantial lessening of competition and tendency toward monopoly in the trade and commerce heretofore described.

(h) Concentration of ownership, management, and control of supermarkets in a few large corporations may be increased.

14. Defendants threaten to carry out the above-described Merger Agreement and plaintiff believes it will be carried out and that it will have continuous unlawful effects unless the relief hereinafter prayed for is granted.

### Prayer

Wherefore, plaintiff prays:

1. That the proposed acquisition by Von of the properties and assets of Shopping Bag, described herein, be adjudged a violation of Section 7 of the Clayton Act.
2. That the defendants Von and Shopping Bag, their officers, directors, agents and all other persons acting on their behalf be enjoined from carrying out the Merger Agreement or any similar plan or agreement.
3. That a preliminary injunction issue against defendants preventing and restraining them from taking any action in furtherance of the Merger Agreement or any similar plan or agreement pending final adjudication of the merits of this complaint.
4. That plaintiff have such other and further relief as the Court may deem just and proper.
5. That plaintiff recover the costs of this suit.

/s/ William P. Rogers, Attorney General. /s/ Robert A. Bicks, Acting Assistant Attorney General.  
/s/ Charles L. Whittinghill, Attorney, Department of Justice. /s/ George B. Haddock, Attorney, Department of Justice. /s/ Laughlin E. Waters, United States Attorney. /s/ James J. Coyle, /s/ Theodore F. Craver, Attorneys, Department of Justice.

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 WM

[Title omitted]

ANSWER TO COMPLAINT—Filed April 14, 1960

. . . . .

5. Admits the allegations contained in Paragraph 5 thereof.

. . . . .

James E. Bates and O'Melveny & Myers, Edward C. Freutel, Jr., William W. Alsup, William W. Vaughn, Richard E. Sherwood, /s/ by William W. Alsup, Attorneys for Defendant, Von's Grocery Co.

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 WM

[Title omitted]

ORDER ALLOWING DEFENDANT LEAVE TO FILE AN AMENDED ANSWER—February 7, 1961

Good Cause Appearing Therefor, It Is Hereby Ordered that defendant may have leave to file an amended answer to the plaintiff's complaint herein. Said amended answer shall be in all respects the same as defendant's answer now on file except that Paragraph 5 shall be changed to read as follows:

"5. Denies each and every allegation contained in Paragraph 5 thereof, except admits that some of the products

sold in retail grocery stores in the Los Angeles area are produced or manufactured outside the State of California. Some such products are sold directly by the producer or manufacturer thereof to grocery companies which operate retail grocery stores in the Los Angeles area, and some are sold to said grocery companies by and through brokers, jobbers, wholesalers or wholesale cooperatives located in the State of California, after the same have been shipped to California. Such products are usually retained for a period of time in warehouses or distribution centers maintained by said grocery companies or by said brokers, jobbers, wholesalers or wholesale cooperatives, as the case may be, before being shipped by truck to the retail stores owned or operated by said grocery companies.

"Alleges in that connection that the retail sale of groceries and related products in the Los Angeles Metropolitan Area by said grocery companies and specifically by defendant to the public is entirely local in character and is not a part of any stream or flow of commerce, is not in interstate commerce and is not part of nor is it itself a line of commerce within the meaning or scope of Section 7 of the Clayton Act.

"Alleges further that the purchase of groceries and related products by said grocery companies and specifically by defendant from business concerns or persons who produce, manufacture or warehouse said products in the State of California is likewise local in character and is not a part of any stream or flow of commerce, is not in interstate commerce and is not part of nor is it itself a line of commerce within the meaning or scope of Section 7 of the Clayton Act."

Dated: February 7, 1961.

Wm. C. Mathes, Judge.

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 WM

[Title omitted]

AMENDED ANSWER TO COMPLAINT—Filed February 7, 1961

Von's Grocery Co. (sued herein as "Von's Grocery Company and Shopping Bag Food Stores" and hereinafter referred to as "Von's") for answer to the complaint herein admits, denies and alleges as follows:

First Defense

1. Admits the allegations contained in Paragraph 1 thereof, except denies that this defendant has violated Section 7 of the Clayton Act either as alleged, or otherwise, or at all.

2. Answering Paragraph 2 thereof, this defendant admits that as of March 25, 1960 both Von's and Shopping Bag Food Stores transacted business and were found within the Southern District of California, but alleges that on March 28, 1960 the defendant Shopping Bag Food Stores was merged into Von's and the separate corporate existence of Shopping Bag Food Stores ceased and terminated on March 28, 1960.

3. Admits the allegations contained in Paragraph 3 thereof.

4. Admits that the allegations contained in Paragraph 4 were correct as of the date the complaint was filed, but alleges that on March 28, 1960 said defendant Shopping Bag Food Stores was merged into Von's and the separate corporate existence of Shopping Bag Food Stores ceased and terminated on that date.

5. Denies each and every allegation contained in Paragraph 5 thereof, except admits that some of the products sold in retail grocery stores in the Los Angeles area are produced or manufactured outside the State of California. Some such products are sold directly by the producer or manufacturer thereof to grocery companies which operate

retail grocery stores in the Los Angeles area, and some are sold to said grocery companies by and through brokers, jobbers, wholesalers or wholesale cooperatives located in the State of California, after the same have been shipped to California. Such products are usually retained for a period of time in warehouses or distribution centers maintained by said grocery companies or by said brokers, jobbers, wholesalers or wholesale cooperatives, as the case may be, before being shipped by truck to the retail stores owned or operated by said grocery companies.

Alleges in that connection that the retail sale of groceries and related products in the Los Angeles Metropolitan Area by said grocery companies and specifically by defendant to the public is entirely local in character and is not a part of any stream or flow of commerce, is not in interstate commerce, and is not part of nor is it itself a line of commerce within the meaning or scope of Section 7 of the Clayton Act.

Alleges further that the purchase of groceries and related products by said grocery companies and specifically by defendant from business concerns or persons who produce, manufacture or warehouse said products in the State of California is likewise local in character and is not a part of any stream or flow of commerce, is not in interstate commerce, and is not part of nor is it itself a line of commerce within the meaning or scope of Section 7 of the Clayton Act.

6. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 thereof, except that it believes the figures contained therein are generally accurate, and it admits that said chains competed intensively with each other and with other corporations and firms engaged in the sale of groceries and related products in the Los Angeles area.

7. Admits the allegations contained in Paragraph 7 thereof.

8. Admits the allegations contained in Paragraph 8 thereof.

9. Admits the allegations contained in Paragraph 9 thereof.

10. Admits the allegations contained in Paragraph 10

thereof were accurate as of the date the complaint herein was filed, but alleges that on March 28, 1960 said defendant Shopping Bag Food Stores was merged into Von's and the separate corporate existence of Shopping Bag Food Stores ceased and terminated on that date.

11. Admits the allegations contained in Paragraph 11 thereof were accurate as of the date the complaint herein was filed, but alleges that on March 28, 1960 said defendant Shopping Bag Food Stores was merged into Von's and the separate corporate existence of Shopping Bag Food Stores ceased and terminated on that date.

12. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 thereof, except that it believes the figures contained therein are generally accurate.

13. Denies each and every allegation contained in Paragraph 13 thereof, except admits and alleges as follows:

(a) Admits and alleges that under a merger agreement between Von's and Shopping Bag Food Stores dated January 25, 1960 and effective March 28, 1960, all assets and properties of Shopping Bag Food Stores were transferred to Von's, and all outstanding Shopping Bag Food Stores stock was converted into Von's common stock.

(b) Alleges that prior to said merger there was no actual or potential substantial or other competition between Von's and Shopping Bag Food Stores in the purchase or distribution of groceries and related products; that as between the great majority of the Von's and Shopping Bag Food Stores markets there was no competition, and with respect to none of said Von's markets was there any actual or potential substantial competition with any Shopping Bag Food Stores market in the sale of groceries and related products; that except as to a few locations the Von's and the former Shopping Bag markets did not draw patrons from the same neighborhood; that as to the few locations referred to the trading areas of the respective grocery stores do not overlap to any substantial degree.

(c) Admits that Shopping Bag Food Stores as a result of said merger has been eliminated as a separate entity, but in this connection alleges that the former

Shopping Bag markets will continue to operate and to compete; that there remain 38 chains of supermarkets and approximately 4,500 additional independent markets and supermarkets doing business in the Los Angeles Metropolitan Area; that there is and has been and will continue to be vigorous competition in the said metropolitan area between the stores of each of said chains and independent markets in the neighborhoods from which they draw customers; that competition will not be substantially lessened or affected adversely as a result of said merger.

(d) Alleges that Von's will not as a result of said merger gain a competitive advantage over independent or smaller sellers of groceries and related products; that a substantial majority of said sellers in the Los Angeles Metropolitan Area are members of one or more wholesale cooperatives; that by virtue of such membership said independent and smaller sellers are able to compete effectively with the grocery stores of the larger chains.

(e) Alleges that the merger of Von's and Shopping Bag Food Stores will not and cannot substantially or otherwise lessen competition or tend to create a monopoly in the purchase, distribution of sale of groceries or related products in the Los Angeles Metropolitan Area or elsewhere.

14. Answering Paragraph 14 thereof, alleges that said merger agreement was carried out on March 28, 1960 and denies that said merger has or will have continuous or any other unlawful effects.

#### Second Defense

15. Safeway Stores, Inc. is the largest grocery chain in the Los Angeles Metropolitan Area both in number of stores and in percentage of total sales of grocery and related products. Said Safeway Stores, Inc. does business in many states of the United States and has total annual sales in excess of \$2,000,000,000 and it has total assets in excess of \$400,000,000.

16. By reason of said merger Von's will be better able to compete with Safeway Stores, Inc.

Wherefore, defendant prays that plaintiff take nothing herein.

Dated: February —, 1961.

James E. Bates and O'Melveny & Myers, Edward C. Freutel, Jr., William W. Alsup, William W. Vaughn, Richard E. Sherwood. /s/ by William W. Vaughn, Attorneys for Defendant, Von's Grocery Co.

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[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil No. 336-60 CC

[Title omitted]

PRE-TRIAL CONFERENCE ORDER April 24, 1961 [AS AMENDED]  
—June 17, 1963

Following pre-trial proceedings under Rule 16 of the Federal Rules of Civil Procedure and Local Rule 9 of this Court, It Is Ordered:

I

This is an action brought by the Attorney General of the United States to prevent and restrain an alleged violation by the defendants of Section 7 of the Clayton Act (15 USC § 18).

Plaintiff is the United States of America. The named defendants are Von's Grocery Company and Shopping Bag Food Stores.

Prior to March 28, 1960 the defendants operated as separate corporations; subsequent to March 28, 1960 they have operated as a single corporation, under the name Von's Grocery Co. Where used in this order the word "defendants" refers to the separate defendants prior to the merger and to the combined defendants subsequent to that date. The answer and all subsequent defense pleadings have been filed by defendant Von's Grocery Company on behalf of both defendants.

The issues are raised by the complaint and by the answer and the amended answer filed herein, and by the statement of contentions of fact and law filed herein by the parties.

## II

Federal jurisdiction is invoked upon the ground that Section 15 of the Clayton Act (15 USC § 25) invests the federal courts with jurisdiction to prevent and restrain violations of the Clayton Act. Plaintiff contends, and defendants deny, that the effect of the merger between the defendants in this case may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act. The material and relevant portions of Section 7 of the Clayton Act read as follows:

Sec. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

## III

The following facts are admitted and require no proof:

1. This action was commenced on March 25, 1960 when the Government filed a civil complaint charging that the merger between the defendants would violate Section 7 of the Clayton Act as amended.
2. The Government filed a motion for a temporary restraining order and motion for preliminary injunction on March 25, 1960 to prevent the consummation of the merger pending a resolution of the case on the merits by the Court.
3. On March 28, 1960 the Court denied the Government's motion for a temporary restraining order and on June 13, 1960 it denied the Government's amended motion for a preliminary injunction.
4. On March 28, 1960 the merger alleged in the complaint was consummated.

5. In a stipulation agreed to by the parties and approved by the Court on February 3, 1961, it was provided that trial shall be confined to the issue of whether the merger violates Section 7 of the Clayton Act as amended. In the event the Court determines that Section 7 has been violated, hearings will thereafter be held as to appropriate relief.

6. Defendant Von's Grocery Co. (hereinafter referred to as Von) is a publicly held corporation organized and existing under the laws of the State of Delaware. At the time the complaint was filed it maintained its principal offices in Los Angeles, California. Subsequent to the merger, Von has moved its offices to the former Shopping Bag headquarters at El Monte, California.

7. Von is one of the leading chains of supermarkets in the Los Angeles area. It is the successor of incorporated and unincorporated businesses which have been engaged in the purchase, distribution, and retail sale of a complete line of groceries and related products since 1932.

8. In the 1959 fiscal year, Von operated 28 complete supermarkets in the Los Angeles area which had total annual sales of approximately \$85 million for an average of approximately \$3 million in sales per store. All of the Von supermarkets are of the self-service, cash-and-carry type.

9. Prior to the merger, Von also owned and operated a modern distribution center in a 216,000 square foot building located on a 20 acre tract of land in the Los Angeles area. Direct railroad and truck shipments were made to this distribution center which provided facilities to receive and distribute groceries and related products to Von's supermarkets throughout the Los Angeles area. Von owned and operated approximately 33 tractors and 39 trailers which it used for transporting merchandise from the distribution center to the various supermarkets.

10. Subsequent to the merger Von sold its distribution center to a competitor and now uses the former Shopping Bag distribution center.

11. Prior to March 28, 1960, defendant Shopping Bag Food Stores (hereinafter referred to as Shopping Bag) was a publicly held corporation organized and existing under the laws of the State of California and maintained its principal offices in El Monte, California. On March 28, 1960, Shopping Bag was merged into Von and the separate

corporate existence of Shopping Bag was terminated on that date.

12. Prior to its merger into Von, Shopping Bag was one of the leading chains of supermarkets in the Los Angeles area. It was the successor to incorporated and unincorporated business entities which had been engaged in the purchase, distribution, and retail sale of a complete line of groceries and related products in the Los Angeles area since 1933. In the 1959 fiscal year, Shopping Bag operated 36 complete supermarkets in the Los Angeles area which had total annual sales of approximately \$79 million for an average of approximately \$2.1 million in sales per store. All of the Shopping Bag Stores were of the self-service, cash-and-carry type. [As amended.]

13. Immediately prior to the merger, Shopping Bag also operated a substantial distribution center which was served directly by railroad and truck, and which received and distributed groceries and related products to Shopping Bag supermarkets. To facilitate distribution to its supermarkets Shopping Bag owned and operated a fleet of trucks, trailers, and automobiles comprising about 166 units in all.

14. In 1958 Von ranked third and Shopping Bag fifth in terms of total sales by grocery stores in the Los Angeles Metropolitan Area. Von had approximately 4.1% and Shopping Bag approximately 3.9% of all grocery store sales in the Los Angeles Metropolitan area, as reported in the Food Topics Magazine study, which is discussed below. Shopping Bag ranked sixth and Von eighth in terms of total number of markets operated in this area in the same year.

15. On the basis of Food Topics Magazine combined Von and Shopping Bag rank second in terms of dollar sales and in terms of total number of supermarkets in the Los Angeles Metropolitan Area. Following the merger Von's total assets were approximately \$42 million and it accounted for approximately 8% of all grocery store sales in the area.

16. In the course of their business both defendants purchased, received at their distribution centers, and sold in their supermarkets a substantial volume of groceries and related products which were produced outside of the State

of California, and which represented approximately 51% of all retail sales by the defendants.

17. Groceries and related products consist of, but are not limited to, the following: groceries, meats, produce, bakery goods, dairy products, delicatessen products, frozen foods, fruits, vegetables, household supplies, drugs, and sundries. They are the products taken as a whole which are generally distributed to the public by grocery stores and supermarkets. Taken as a whole these products constitute the relevant line of commerce in this case.

18. In 1959 the sale of food products accounted for approximately 90% of all sales by grocery stores in the Los Angeles area.

19. In the same period grocery stores accounted for a substantial part of all food sales for off-premise consumption in the Los Angeles area.

20. The relevant trade area in which the defendants operated prior to the merger was the Los Angeles Metropolitan Area, consisting of Los Angeles and Orange Counties.

21. Combined Los Angeles County and Orange County have also been defined by the Bureau of the Census as the Los Angeles Metropolitan Area since, taken together, they meet the tests set by the Department of Commerce in terms of population and commercial interchange.

22. Los Angeles ranks as the second largest metropolitan area in the United States in terms of population, income, and retail dollar sales.

23. Approximately 6,750,000 persons reside in the Los Angeles Metropolitan Area, and total retail sales in the area were approximately \$9,100,000,000 in 1957, representing 42% of all California retail sales, 33% of total retail sales on the Pacific coast, and 25% of such sales in the 11 western states.

24. Since the beginning of World War II and particularly during the last 15 years, Los Angeles has been one of the most rapidly expanding areas in the United States.

25. The Los Angeles Metropolitan Area is more than a community. It is an appreciable trade area and a section of the country within the meaning of Section 7 of the Clayton Act.

26. Sales of groceries and related products in the Los

Angeles trade area are in the neighborhood of \$2.5 billion annually.

27. Such products are produced, manufactured, processed or packaged by numerous suppliers located throughout the United States.

28. A substantial volume of groceries and related products originate outside the State of California and is shipped into the Los Angeles area where it represents approximately 51% of all retail sales of such products.

29. These products are shipped by air, truck, rail, and sea transportation into the Los Angeles area and subsequently sold by the defendants and other retail grocery firms to consumers in the Los Angeles area.

30. In order to maintain a supply of such products at all times the defendants and other retail grocery firms in the Los Angeles area purchase and distribute, or cause the distribution to their stores of new products to replenish or replace products sold. In the course of such distribution some of the products handled by the defendants are warehoused in their distribution center and some are not.

31. Some groceries and related products are perishable and must be sold to the ultimate consumer in a very short time.

32. A number of chains in the Los Angeles area operate purchasing offices staffed by full time employees who are in contact with suppliers located throughout the United States to secure and effect the shipment of substantial quantities of groceries and related products into the Los Angeles area from facilities located outside the State of California.

33. The buyers of groceries and related products employed by some of these chains occasionally make trips to other states and foreign countries to arrange the purchase and shipment of groceries and related products into the Los Angeles area.

34. As a result of their buying operations substantial quantities of groceries and related products which are produced or manufactured outside the State of California are shipped to distribution centers operated by the supermarket chains from which points they are delivered in trucks operated by the chains to the chains' retail stores for sale to consumers in the Los Angeles area.

35. Numerous retailers in the Los Angeles Metropolitan Area also receive from cooperatives groceries and related products which originated from suppliers located throughout the United States.

36. These cooperatives maintain warehouses and distribution centers which receive direct shipments of substantial quantities of groceries and related products from producing facilities located in various states and distribute such products in trucks to the retail stores operated by their members, pursuant to orders from such members.

37. Such cooperatives also maintain full time buying offices which are in contact with suppliers located throughout the country to effectuate the purchase and shipment to the Los Angeles area of groceries and related products. Such products are generally sold in retail grocery stores operated by the members of the cooperatives, but some cooperatives sell to non-members.

38. Alfred M. Lewis, Inc., which now does business as Orange Empire Co-Op, services numerous retail members and non-members in California, Arizona, and Nevada. Alfred M. Lewis, Inc. was formerly a grocery wholesaler but it now calls itself a cooperative. It has annual wholesale sales of approximately \$280 million.

39. Numerous producers, manufacturers, processors, and packagers of groceries and related products located outside the State of California are represented by food brokers and manufacturers' representatives in the Los Angeles area who arrange for the distribution of their products to retail grocery firms in the Los Angeles area.

40. These brokers and manufacturers' representatives secure the shipment of products from warehouses located either inside or outside the state to retail grocery firms, cooperatives or other wholesalers in the Los Angeles area.

41. Von and Shopping Bag, prior to the merger, were engaged in interstate commerce and Von presently is engaged in interstate commerce.

42. In the last 20 years there has been an increase in the size of individual retail grocery stores in the Los Angeles area.

43. In the same period there has also been an increase in the size of individual retail grocery stores in other parts of the United States.

44. Since 1940 there has been a decrease in the number of grocery stores in operation in the Los Angeles Metropolitan Area.

45. During the same period there has been a decrease in the total number of retail grocery stores in the United States.

46. Prior to the merger the twenty leading chains of supermarkets in the Los Angeles Metropolitan Area were all a part of the retail grocery competition in the Los Angeles Metropolitan Area and as such each of these chains competed with each other and with other corporations and firms engaged in the purchase, distribution and retail sale of groceries and related products in the Los Angeles Metropolitan Area. As part of the competition, the major chains as well as other grocers frequently responded to competitive practices originated by one of the other major chains. But defendants contend that competition between individual Von and Shopping Bag stores was limited to those instances where a store of each company was so located that both could compete for some of the same customers and defendants admit that in such instances the competition was intensive. [As amended.]

47. Prior to the merger both defendants were competitive factors in the Los Angeles Metropolitan Area.

48. The order and importance of retail chains in the Los Angeles area can be found in various statistical tables. One such table appearing in Food Topics Magazine was used by the Government in preparing Government's Exhibit 8 for the hearing on the preliminary injunction and was introduced by the defendants as Exhibit A in that hearing. The parties agree that it is accurate in certain respects. However, both parties clearly understand that this table is an estimate and may introduce other statistics and figures which are at variance with estimates appearing in the Food Topics table.

49. Prior to the merger both defendants competed effectively against Safeway.

50. In the same period certain other chains and independents also competed successfully against Safeway.

51. Between 1949 and 1959, both defendants expanded into new areas, increased the number of their stores in operation, and increased their total dollar sales.

52. Prior to the merger some other chains and independents also increased their sales. Some other chains also expanded into new areas and increased the number of stores in operation.

#### IV

The reservations as to the facts recited in paragraph III above are as follows:

1. The parties reserve objections as to the admission in evidence of any of said facts on the ground of immateriality and irrelevancy.

2. The effect of the admission of the parties to each and all of said facts is limited to this action only and said admission is for the purpose of this action only and neither constitutes an admission by either party for any other purpose nor may be used against the parties in any other proceeding.

3. The parties reserve the right to submit statistical information which may be inconsistent with material appearing in the Food Topics study.

#### V

There are no facts which, though not admitted, are not to be contested at the trial by evidence to the contrary.

#### VI

The issues which are to be litigated upon the trial are maxed issues of fact and law. It was found that the clearest way to set them forth was to treat them in part VIII of this order which has been broadened to include issues of fact and law.

#### VII

The exhibits to be offered at the trial will be exchanged by the parties in accordance with the pre-trial stipulation approved by the Court on April 18, 1961. The exhibits upon which the Government intends to rely are set forth in Appendix A of this order. The exhibits upon which the defendants intend to rely are set forth in Appendix B of this order.

## VIII

The issues of fact and law in this case are set forth below. In setting forth the issues the parties have noted the instances in which issues are the subject of agreement between the parties.

1. Were both defendant corporations engaged in interstate commerce and subject to the jurisdiction of the Federal Trade Commission?

The parties are in agreement that the answer as to this issue is in the affirmative.

2. Does the Court have jurisdiction to determine whether the merger of the defendants in this case violates Section 7 of the Clayton Act?

The parties are in agreement that the Court has jurisdiction to determine this issue.

3. What are the relevant issues to be determined by the Court in a Section 7 Clayton Act proceeding?

The parties agree that the relevant issues are: (a) the line of commerce, (b) the section of the country, and (c) whether the effect of the merger may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

4. What is the meaning of the word "may" in Section 7 of the Clayton Act?

The parties agree that the word "may" in Section 7 of the Clayton Act means more than "mere possibility" and less than "certainty or actuality". The Government need not prove that any substantial lessening of competition or tendency to create a monopoly has actually occurred, but it must prove that there is a reasonable probability of the merger producing the prohibited effects.

5. Who has the burden of proof as to these issues?

The parties agree that the plaintiff has the burden of proof as to each of these issues.

6. The parties' agreements with respect to issues stated in paragraphs 9, 12, and 13, below, and with respect to paragraphs 17 and 46 in Part III above, are subject to the following reservations which are issues in this case [as amended]:

(a) The Government contends that both the interstate and the intrastate activities of the defendants and other retail grocers in the Los Angeles Metropolitan Area who are otherwise covered by the statute are within the scope of Section 7 of the Clayton Act because all such activities affect interstate commerce or are a part of the interstate flow of groceries and related products.

(b) The defendants do not agree that intrastate activities of the defendants and other retail grocers in the Los Angeles Metropolitan Area are within the scope of Section 7 of the Clayton Act.

(c) The defendants assert that the Los Angeles Metropolitan Area is not the relevant section of the country as to the wholesale purchase and sale of groceries and related products. The Government assumes no burden of proof as to the relevant section of the country at the wholesale level since it intends to base its case on the probable effects of the merger in the relevant section of the country for grocery retailers, which is the Los Angeles Metropolitan Area.

The contentions of the parties with respect to these matters are set forth in the parties' respective memoranda of contentions of fact and law and will be discussed in detail in their respective pre-trial briefs.

7. Is the line of commerce in a Section 7 Clayton Act case any product or group of products which have sufficient peculiar characteristics and uses to make them distinct from all other products?

The parties are agreed that the answer to this issue is in the affirmative.

8. Do groceries and related products, taken as a whole, have peculiar characteristics and uses in the operation of

retail grocery stores which make them distinguishable from all other products?

The parties agree that the answer to this issue is in the affirmative.

9. Are groceries and related products the relevant line of commerce for determining whether this merger violated Section 7 of the Clayton Act?

The parties are in agreement that the answer to this issue is in the affirmative.

10. Is the section of the country in a Section 7 Clayton Act case the area of effective competition?

The parties are in agreement that the answer to this issue is in the affirmative.

11. Need the section of the country in a Section 7 case be the entire nation? If not, may it be any appreciable segment of the trade which is largely segregated from, independent of, and not affected by the trade in that product in other parts of the country?

The parties agree that the relevant section of the country need not be the entire nation.

12. Is the Los Angeles Metropolitan Area the relevant section of the country for determining the effect of this merger?

The parties are in agreement that the answer to this issue is in the affirmative.

13. When the Court has determined the relevant line of commerce and the relevant section of the country, is the sole issue remaining whether the effect of the merger may be substantially to lessen competition or to tend to create a monopoly in said line of commerce in said section of the country?

The parties are in agreement that the answer to this issue is in the affirmative.

14. What are the factual and legal tests which the Government must meet in proving that the effect of this merger may be substantially to lessen competition in violation of Section 7 of the Clayton Act?

The parties do not agree as to this issue. Their positions on the issue are set forth in their respective memoranda of contentions of fact and law and will be discussed in detail in their respective pre-trial briefs.

15. What are the factual and legal tests which the Government must meet in proving that the effect of this merger may be to tend to create a monopoly in violation of Section 7 of the Clayton Act?

The parties do not agree as to this issue. Their positions on the issue are set forth in their respective memoranda of contentions of fact and law and will be discussed in detail in their respective pre-trial briefs.

## IX

The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

Dated: April 24, 1961

/s/ William Mathes, United States District Judge.

## X

In view of the fact that the pre-trial conference order dated April 24, 1961 was amended during the trial by stipulation and with the approval of the Court, it was deemed desirable to file a substitute pre-trial order in order to consolidate all of the matters into one written document.

Dated: June 17, 1963

Charles H. Carr, United States District Judge.

Approved as to form and content:

Malcolm F. Knight, Attorney, Department of Justice  
Johnson, Bates & Sheffield and O'Melveny & Myers. By  
William W. Vaughn, Attorney for Defendants.

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UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
CALIFORNIA

Office of the Clerk  
Room 231, U. S. Post Office & Court House  
Los Angeles 12, California

June 21, 1961.

James J. Coyle,  
Theo F. Craver  
Special Asst to  
Attorney General  
312 North Spring St.,  
Los Angeles 12, California

Wm. W. Alsup  
O'Melveny & Myers  
433 South Spring St.,  
Los Angeles 13, California

James E. Bates  
Suite 340  
727 West Seventh Street  
Los Angeles 17, California

Re: United States of America

vs.

Von's Grocery Co., et al

Civil Case No. 336-60-WM

Gentlemen:

You are hereby notified that the Trial scheduled on the calendar of August 1, 1961 in the above-entitled cause, have been continued, on the Court's own motion to 9:30 AM on October 31, 1961.

John A. Childress, Clerk, By R. T. Ericksen, Deputy  
Clerk.

IN THE UNITED STATES DISTRICT COURT

No. 336-60-WM Civil

[Title Omitted]

At: Los Angeles, Calif.

Present: Hon. Wm. C. Mathes, District Judge;  
Deputy Clerk: W. E. Payne  
Reporter: none  
Counsel for Plaintiff: no appearance  
Counsel for Defendant: no appearance

MINUTE ENTRY OF ORDER—SEPTEMBER 21, 1961

Proceedings:

It is ordered that trial of this case is continued from Oct. 31, 1961, to Nov. 14, 1961, at 10 AM. Counsel notified.

IN THE UNITED STATES DISTRICT COURT

No. 336-60-S Civil

[Title Omitted]

At: Los Angeles, Calif.

Present: Hon. Albert Lee Stephens, Jr., District Judge;  
Deputy Clerk: Chas. E. Jones  
Reporter: Virginia Wright  
Counsel for Plaintiff: Malcolm Knight, Assistant U.S.  
Attorney for USA, John F. Hughes, Assistant U.S. At-  
torney for USA  
Counsel for Defendant: Von's: Wm. W. Alsup

MINUTE ENTRY OF ORDER—NOVEMBER 14, 1961

Proceedings: For Court trial.

Court orders that trial date of Nov. 14, 1961, is vacated, and case is now set for pretrial Dec. 18, 1961, 2 PM.

## IN THE UNITED STATES DISTRICT COURT

No. 336-60-CC Civil

[Title Omitted]

At: Los Angeles, Calif.

Present: Hon. Charles H. Carr, District Judge;

Deputy Clerk: L. B. Figg

Reporter: none

Counsel: James J. Coyle, for Plaintiff U.S.A., Att'y  
Anti-Trust Div., Dep't of Justice.

Counsel: Wm. F. Alsup, Wm. Vaughn, for Defendant

## MINUTE ENTRY OF ORDER—FEBRUARY 19, 1963

## Proceedings:

Court and counsel discuss procedural matters, and it is ordered that the case is set for trial 10 AM, June 11, 1963.

[fol. 1] IN THE UNITED STATES DISTRICT COURT, SOUTHERN  
DISTRICT OF CALIFORNIA, CENTRAL DIVISION

HONORABLE CHARLES H. CARR, Judge Presiding

No. 336-60-CC Civil

UNITED STATES OF AMERICA, Plaintiff,

v.

VON'S GROCERY CO., ETC., Defendants.

Transcript of Proceedings—June 11, 1963

. . . . .

[fols. 2-3] APPEARANCES:

For the Plaintiff: James J. Coyle, John F. Hughes, Malcolm F. Knight, Attorneys for the U.S. Department of Justice, Antitrust Division, 1602 Federal Building, Los Angeles, California.

For the Defendants: O'Melveny & Myers, 433 South Spring Street, Los Angeles, California; by William W. Alsup, William W. Vaughn and Johnson, Bates & Sheffield, 727 West 7th Street, Los Angeles, California; by James E. Bates.

[fol. 4] Los Angeles, California, Tuesday, June 11, 1963,  
10:00 A.M.

#### COLLOQUY BETWEEN COURT AND COUNSEL

The Clerk: Case No. 336-60-CC Civil, United States of America vs. Von's Grocery Company, and so forth, for court trial.

Mr. Coyle: Ready, your Honor.

Mr. Alsup: The defendants are ready, your Honor.

The Court: Proceed.

Mr. Coyle: If your Honor please, I am James Coyle, representing the United States Government in this case.

In view of the lengthy briefs that have been filed, I don't know whether the court wants an opening statement. But I am prepared to make a very brief opening statement.

The Court: Well, I would like to know how you propose to present the case. It is all in already, isn't it?

Mr. Coyle: Pretty much, your Honor, yes.

The Court: You have no oral testimony, have you?

Mr. Coyle: Yes, we do. We have three witnesses we propose to call.

The Court: Why couldn't you do it by affidavit?

Mr. Coyle: Your Honor, we have done some by affidavits—

[fol. 5] The Court: I understand you have, but I am talking about these three.

Mr. Coyle: These three that we submitted summaries of testimony on the evidence of these three—two of the three have been deposed. But we had intended to call these three to give the court some live testimony.

The Court: It won't impress me any more than the—whatever the unlive is.

Mr. Coyle: Yes, your Honor.

The Court: Go ahead. How long will you take with them?

Mr. Coyle: We propose to take a day with the witnesses and the exhibits.

The Court: The exhibits in what fashion?

Mr. Coyle: The exhibits are introduced by affidavit, your Honor. We have them bound in a book. I don't know whether your Honor has that book or not.

The Court: This is the book here?

Mr. Coyle: Yes, your Honor. And each exhibit is involved in the affidavit. It is a looseleaf—

The Court: I thought in your brief that you had covered all of this material, haven't you?

Mr. Coyle: I think we pretty well covered the material. But I propose to go through the exhibits, if the court so desires—

[fol. 6] The Court: Well, I will give you ample time, of course, counsel—

Mr. Coyle: No, I didn't mean that. I thought the court might want us to go through the affidavits and introduce the exhibits one by one.

The Court: I don't think it is necessary. Why don't you just put all the exhibits in at one time?

Mr. Coyle: I will do that, your Honor.

The Court: Unless there is some procedural difficulty. Is there, counsel for the defense?

Mr. Alsup: No procedural difficulty, your Honor. There are objections to some of them.

The Court: What is the general basis of your objections?

Mr. Alsup: Well, in large part lack of materiality, going beyond the pretrial order, in some cases presenting an incomplete picture.

For example, we have exhibits showing Von's and Shopping Bag were merged in 1958, and failing to disclose that they were merged in 1960, and that since 1960 some of their top leading chains have gone out of business.

They create an incorrect impression of market share. But I can cover that in argument or in—

The Court: Well, I was going to say, counsel, I have a [fol. 7] practice that many judges probably don't have. I just disregard immaterial stuff. I think I have had enough experience to know immaterial from material, and hearsay from non-hearsay, and I just don't pay any attention to it.

Whenever a witness on this stand gives hearsay testimony—unless it is expert opinion—I just close my ears. I don't hear it. So it is a waste of time for a lawyer to ask for a hearsay answer in this court. I don't even listen to it.

Now, I will let you make your objections if you think your record ought to be protected, naturally. But I will tell you now if it is immaterial—and you will point out how it is immaterial—I will completely disregard it. I won't even read it.

Mr. Alsup: That is perfectly satisfactory to me, your Honor.

I would like to make a brief comment upon, if I may, the hearsay matter.

Some surveys which were made for the purpose of determining—

The Court: There are exceptions, counsel—

Mr. Alsup: Which were made for the purpose—

The Court: I understand the exceptions, I think I do, most of them.

Mr. Alsup: Better than I, I am sure, your Honor.

[fol. 8] The Court: I am not saying that, but I think I

understand it—at least I read Wigmore through from the front page to the back. That I have done.

Mr. Alsup: I have not.

Well, I think then, your Honor, that to receive—

The Court: But I don't want to preclude you, counsel, from protecting—if you feel that there is some error that might be prejudicial, I certainly want you to protect your record. But I am telling you, so that I will save you the time, that I will not pay any attention to any incompetent testimony.

Mr. Alsup: Your Honor, I am sure that being so, I will not be prejudiced.

The Court: As I understand this case, gentlemen, we are down to really one issue, really one issue, and that is: Does it substantially lessen competition? Isn't that the real issue in this case?

Mr. Coyle: Yes, your Honor.

The Court: What other issue do we have?

Mr. Coyle: Whether it tends to substantially lessen competition.

The Court: I believe you are contending that the interstate commerce feature of it is raised.

Mr. Alsup: We have raised that issue, your Honor.

The Court: Are you serious about it?

[fol. 9] Mr. Alsup: Yes, very serious, your Honor.

The only comparable case under Section 7 is U.S. vs. Byrd involving the Daily Journal, decided by the Ninth Circuit a year and a half ago, and holding that section does not apply to the acquisition of these competing advertising newspapers.

Now, that is only one of our arguments, your Honor. And I must say we are much more convinced by our other argument. But we feel it is a very valid argument.

The Court: I see. Well, my first impression is that I am probably against you on the store.

Mr. Alsup: I think, your Honor, that would be true but for the fact that the pretrial order makes it very clear that the effect, if any, of this merger on suppliers is not an issue.

The Court: That is correct. That is what your pretrial order says.

Mr. Alsup: Right. So what we are really talking about

in this case now then is competition between retail stores and a local two-county area of one state. And we feel it is a valid point but—

The Court: Well, let me put it this way: I believe in the more or less Socratic method of disposing of these discussions. So if both sides, the court and the lawyers, discuss it in that way and arrive at some understanding [fol. 10] and some conclusion based upon reasoning, the reasoning process. Judge Cardozo calls it the judicial reasoning process. And I need the assistance of both counsel on both sides.

Now, I understand your point, and that is, since you have eliminated by your pretrial order the situation of suppliers, I understand your position is that therefore interstate commerce is not affected. It is local in its nature, is that right?

Mr. Alsup: That is correct. This case deals with competition in the local retail area.

Mr. Coyle: Well, your Honor, we feel—

The Court: Well, counsel, I was concerned when I read the pretrial order about that situation because by the pretrial order you have said—do you remember the paragraph?

Mr. Coyle: I don't remember the paragraph, I am looking for it, your Honor.

Mr. Alsup: I think it is paragraph 86(2), your Honor, I believe.

The Court: Do you have the page, counsel?

Mr. Coyle: Yes.

Mr. Alsup: Your Honor, it it pages 11 and 12.

The Court: Page 11?

Mr. Alsup: And 12. It runs over to 12.

[fol. 11] The Court: But there is a specific statement somewhere, counsel. That is not it, is it? The one I am referring to, I think, just says plainly that it eliminates the suppliers.

Mr. Coyle: I don't think there is any statement on that, to that effect.

The Court: But that is strange, I read it last night.

Mr. Alsup: We made that last statement in the brief, your Honor.

The Court: I thought I saw it in the pretrial order. Maybe I am in error about it. Maybe I got it from the brief.

Mr. Coyle: I don't think we ever said that, your Honor.

I think that all we said was that we were going to prove its effect, that in the Los Angeles Metropolitan Area, and and we were not worried about the effect in the other areas. But we have never said this would affect the interstate commerce flow of groceries, because it obviously will be—because obviously there were two concerns buying groceries, Von's and Shopping Bag and now there is one. That would automatically affect interstate commerce because—

The Court: Well, I thought—maybe I am mixed up with the brief, but I thought that the—I got the impression that [fol. 12] in the pretrial order there was elimination of the suppliers. Am I wrong about that?

Mr. Coyle: As far as I know, your Honor, you are.

The Court: I see.

Mr. Coyle: All we stipulated was that this was over the area of competition. Now—

The Court: That part I understand, your stipulation as to the line of commerce—

Mr. Coyle: The relevant area—

The Court: The section, you have stipulated to that.

Mr. Coyle: Yes, there is no question in our mind but what we are content that the retail sale of groceries, the purchase, distribution and sale of groceries by the retail grocery chains in the Los Angeles Metropolitan Area is part of this general flow of interstate commerce—

The Court: Well, I agree with you, except I had gotten the impression that by the pretrial order you had eliminated suppliers. So if I am in error about that, of course I go back to my original position, that it would certainly have an indirect effect and maybe a direct effect on interstate commerce.

Mr. Coyle: We have said we are not going to call any suppliers to prove that suppliers are injured, because we don't think that is necessary. But other than that—

[fol. 13] The Court: I see. Then I guess I am in error about that, counsel.

Mr. Alsop: Yes, your Honor, although I would like to add this: When we say that the relevant section of the country is the Los Angeles Metropolitan Area, that necessarily eliminates suppliers from the case, because some of the suppliers are interstate and some intrastate.

We agree that the relevant product line is groceries and related products taken as a whole.

And where they disprove any intent—disclaim any intent to prove the relevant section of the country on the wholesale level, it seems to me it necessarily follows that takes the supplier issue out of the case.

Now, we have admitted in the pretrial order proceedings that we are engaged in the interstate commerce—

The Court: Well, I think probably we are doing the age-old thing that lawyers and judges do. We are in the field of semantics again.

So we will proceed and find out what happens.

Mr. Alsup: Thank you.

The Court: But my offhand impression is that the commerce feature is pretty much obvious in the case.

Mr. Alsup: I agree with your Honor. The commerce feature is obvious in the case and I must say I would feel a lot worse about this case if that were the—

[fol. 14] The Court: Well, I was rather thinking, divining that that would be your thinking.

Go ahead, counsel.

Mr. Coyle: Your Honor—

The Court: May I ask you about these experts? Who are they, professors?

Mr. Coyle: Your Honor, we don't have any experts on our case in chief. These witnesses that we have are government statisticians, a man from—a former economist from the Department of Justice.

The Court: I see.

Mr. Coyle: Who made some charts. And another man from the FBI who made some charts. And a man from the State Board of Equalization.

The Court: Just to show facts, economic facts, is that right?

Mr. Coyle: That is correct, your Honor.

The Court: I see.

Mr. Coyle: We do have some experts as rebuttal witnesses, depending upon your Honor's ruling on certain of the expert testimony that defendants are offering.

The Court: Well, counsel, I want to hear any expert testimony that will enlighten me, but not just to hear somebody's opinions that are no better than my opinions.

Mr. Coyle: We don't—

[fol. 15] The Court: I hope we don't get into that—

Mr. Coyle: We don't have any expert to testify as to the ultimate issues, your Honor.

The Court: Yoy know, some of these economists—I want to tell you—are off to start with. They ought to be examined.

Mr. Coyle: If your Honor please, then I would offer in evidence all of the government's exhibits, starting with exhibit 1—

The Court: Any objection to this method?

Mr. Coyle: Exhibits 1 through 71.

The Court: They will all be admitted into evidence.

Now, if you have any objections, counsel, you can seriatim go down now on each one and state your objections.

Mr. Alsup: We had some serious objections, your Honor, to certain statistical exhibits prepared by the State Board of Equalization. But since we have the deposition and the affidavit of that man which we feel discredit the effect to be given to those exhibits, and in view of your Honor's prior statement, we are not going to make any objection.

The Court: Very well.

All right. They will all be admitted in evidence.

[fol. 16] The Clerk: That is Plaintiff's Exhibits 1 to and including 71 marked and received.

(The exhibits referred to were marked and received in evidence as Plaintiff's Exhibits 1 to 71.)

Mr. Coyle: Now, your Honor, we do have the problem of these affidavits, and as to our industry witnesses, I think at the last pretrial conference the court said that it wasn't necessary to submit affidavits. So we submitted summaries as to what the individual industry witnesses would testify to. And then the defendants deposed them on the basis of those summaries.

The Court: Well, that was my understanding.

Is that correct, counsel?

Mr. Alsup: Yes, your Honor. We agreed that we could do it either by statement of what they would testify to, or by affidavit.

The Court: Well, now, then, what do you want to do, put these in evidence?

Mr. Coyle: I suppose we had better put the affidavits and the summaries in evidence then, in view of this procedure.

We will put them all in.

Mr. Alsup: And the depositions.

Mr. Coyle: And the depositions, yes.

Now, I suppose they would have to be marked, wouldn't [fol. 17] they?

The Court: I think they should be, yes.

Mr. Coyle: Perhaps we could call our witness and have him testify and then at recess perhaps we could mark the—

The Court: Does it take quite a bit of marking, counsel?

Mr. Coyle: No, it wouldn't take much.

The Court: May I just see it, please? Pass it to me, Mr. Clerk, the affidavits—I thought you had them in one group.

Mr. Coyle: These are the summaries of the industry witnesses, what the industry witnesses will testify—

The Court: I see. I wonder if we can't just put this in as a whole.

Mr. Coyle: I suppose we could, your Honor.

The Court: Any objection to that?

Mr. Alsup: No, your Honor. I assume that will be copied into the record, along with the depositions of the witnesses immediately following it. We need the record—

The Court: Yes, that is correct. You do need a record.

Now, I wonder, rather than have the lawyers stand here in court and read them into the record, I wonder if they can be copied in by the reporter. Is there any problem [fol. 18] there?

Mr. Alsup: No, your Honor.

The Court: Why don't we have it done that way?

Mr. Alsup: Then we would not have them marked as exhibits, they would be copied into the record immediately following—

The Court: I think just as an order of caution, I will have it marked as an exhibit and then she will know to copy that into the record. So you won't have to take it up on an appeal, you can eliminate it, once it is copied into the record. Is that satisfactory?

Mr. Alsup: That is very satisfactory, your Honor.

I might mention in this connection that they have 30

statements virtually identical of all of their so-called industry witnesses.

We took the depositions of 18 of them. We then entered into a stipulation with counsel that the 18 were representative of what the remaining 12 would be testifying to. So I think that should be in the record, too.

The Court: It certainly should. The stipulation is—where is the stipulation?

Mr. Coyle: It is filed with the court.

The Court: It is filed?

Mr. Alsup: It is filed, yes, your Honor.

The Court: Well, that stipulation is on file as part of [fol. 19] the record. Then I think there is nothing further required, is there?

Mr. Alsup: Nothing, your Honor.

The Court: Unless you want it copied in at the time it is copied in in connection with the—let's mark this first. Mark this as an exhibit.

The Clerk: That will be Plaintiff's Exhibit No. 72.

Mr. Coyle: 72.

(The exhibit referred to was marked Plaintiff's Exhibit 72 for identification.)

The Court: 72, for the record, contains—state it, counsel, what it contains.

Mr. Coyle: Government's Exhibit 72 contains statements of proposed testimony which we expect to elicit from the government's industry witnesses.

The Court: Well, these are filed in lieu of those by stipulation with counsel for the defense, is that correct?

Mr. Coyle: Yes.

The Court: Is that correct, counsel?

Mr. Alsup: I am not sure I understood that, your Honor. I am sorry.

The Court: Well, these—these are called affidavits or narrative statements, which?

[fol. 20] Mr. Coyle: Narrative statements.

The Court: Narrative statements?

Mr. Coyle: Yes.

The Court: Which are the testimony, or would have been the testimony of the witnesses had they been called to the stand. This is filed in lieu of calling these witnesses to the stand.

Mr. Alsup: That is correct, your Honor.

The Court: And this is by stipulation.

Mr. Alsup: And after each such statement as it appears in the record will then be copied the deposition.

The Court: Now, that is a problem that the reporter—I don't know how she will work that out there. How are we going to do that?

Mr. Coyle: There will be a lot of typing for her.

The Court: Well, what she does is to dictate, I think, and then someone else does the typing. So if she has the material at the proper place—I am talking about placing it—you want it to go in the record, the affidavits or the depositions. From what you say you want it to go in following the testimony of the narrative statement of that particular witness, is that correct?

Mr. Alsup: Yes, your Honor, right. And all of these depositions have been filed and they are here in court.

[fol. 21] The Court: Well, the reporter is instructed to copy the depositions of those particular persons right after the narrative statement that she copies from Exhibit 72. Is that understood?

Mr. Alsup: Your Honor, the stipulation as to the remaining 12, whom we did not depose, was filed on May 7th, 1963. And it is very short, I wonder if it might not be just as well to read that into the record at this time.

The Court: That is perfectly all right, if you care to.

Mr. Alsup: Yes, your Honor.

The Clerk: 72, I presume, is admitted in evidence?

The Court: 72—the purpose of putting a number on 72 is to—I suppose we should put it in evidence. It will be a duplication, but it is to be sure that it is identified for the reporter in making her copywork.

Mr. Alsup: Yes, your Honor.

The Court: So it will be admitted into evidence.

The Clerk: That is 72 in evidence.

(The exhibit referred to was received in evidence as Plaintiff's Exhibit No. 72.)

Mr. Alsup: I can ask my associate, Mr. Vaughn, to read this, your Honor. I seem to be losing my voice.

The Court: Counsel for the government, don't you [fol. 22] think you ought to sign this document?

Mr. Coyle: Yes, your Honor.

The Court: It is an original document.

Mr. Coyle: We just prepared it this morning.

The Court: All right. Sign it, will you, please?

Mr. Alsup: I might say, your Honor, we were talking and we did not sign the printed brief we filed.

The Court: Yes, I noticed that. That is rather unusual. Are you ashamed of the brief, counsel?

Mr. Alsup: Hardly, your Honor. If you will notice, the printer made a mistake and printed our names twice on the last page. And if we had signed it would have been a third time.

The Court: All right. You have signed it now?

Mr. Alsup: No, your Honor.

The Court: I think it probably should be signed.

Mr. Alsup: Yes.

The Court: That is the rule of the court.

Mr. Alsup: Yes, I would like to apologize to the court.

The Court: Well, you can do it later.

Mr. Vaughn: Your Honor, would you like me to read the stipulation in the record now?

The Court: Yes, go ahead.

[fol. 23] Mr. Vaughn: This is a stipulation filed May 7th.

"I. The government has furnished defense counsel with summaries of the testimony of a total of 30 proposed industry witnesses (10 under date of December 14, 1962; 10 under date of January 17, 1963; and 10 under date of February 18, 1963).

"II. Between April 15, 1963, and April 24, 1963, the defendants took the depositions of 18 of the government's industry witnesses. It was the defendants' decision to take the depositions of these witnesses and the selection of the witnesses to be deposed was made by the defendants.

"III. The defendants have now noticed the depositions of the remaining 12 witnesses commencing on May 8, 1963.

"IV. In order to expedite litigation by eliminating further depositions it is agreed between the parties that the testimony to be given at the depositions of the remaining 12 government industry witnesses would be

- similar to the testimony given at the 18 depositions already taken."

Signed by counsel for both parties.

The Court: All right, Mr. Coyle.

[fol. 24] (The narrative statements and depositions of the witnesses referred to appear in the following words and figures, to-wit:)

#### TESTIMONY OF LLOYD E. ALLEN

If subpoenaed to testify, Lloyd E. Allen would testify as follows:

1. He is the owner of Allen's Northridge Market, 8738 Reseda Boulevard, Northridge, Los Angeles County, California. He has owned and operated this market for the past 18 years. In 1959 Allen's Northridge Market had gross sales of about \$1,250,000.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Allen closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all of the major chains appearing in these booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

[fol. 25] 3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many [fol. 26] more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major perishable products as fresh dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperative but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of

the cooperative with direct purchasing and a highly developed distribution system.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the picture presented in defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would [fol. 28] state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for new locations is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 30] TESTIMONY OF SOLOMON BARONDESS

If subpoenaed to testify, Solomon Barondess would testify as follows:

1. He is the owner of Trade-Rite market, 2809 Honolulu Avenue, Montrose, Los Angeles County, California. He purchased this store in 1958. In 1959 it had sales of approximately \$190,000.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, he closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the

"Black Book", a pricing publication similar to the Key Services, and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin", "Super Market Merchandising", "Chain Store Age" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area the witness would testify that in the period since he has been [fol. 31] in business the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result fewer grocery stores are needed in the area to serve a comparable number of people.

[fol. 32] 6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those

warehouses, and operate large trucking facilities. As a result they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Thus they have combined the advantages of the cooperatives with direct purchasing and a highly developed distribution system. In addition some of the chains, including Von's and [fol. 33] Shopping Bag, belong to a dairy cooperative named "Jersey Maid", which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 percent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area,

[fol. 34] that they were profitable operations which and experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair, and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag".

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars". He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number [fol. 35] of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major strike in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale

of groceries and related products in the Los Angeles metropolitan area.

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[fol. 36] DEPOSITION OF SOLOMON BARONDESS, taken on behalf of the Defendants, at 433 South Spring Street, Los Angeles, California, at 11:00 a.m., Wednesday, April 24, 1963, before Harold M. Leibovitz, C.S.R., Notary Public pursuant to subpoena and notice.

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SOLOMON BARONDESS, having been first duly sworn, deposed and testified as follows:

Direct examination

By Mr. Alsup:

Q. Mr. Barondess, would you state your name and address for the record.

A. Solomon Barondess. Do you want business address or residence address?

Q. Would you give both?

A. Business 2809 Honolulu Avenue, Verdugo City; residence is 553 Woodbury Road, Glendale.

Q. This statement says that Honolulu Avenue address is Montrose. It is really Verdugo City?

A. It is really Verdugo City but it is part of Glendale. It is just post office zoning.

Q. We have been furnished by the Government attorneys a copy of a document entitled "Testimony of Solomon Barondess." Do you have a copy of that?

A. Yes, sir.

Q. You read it over before you signed it?

A. Yes.

Q. You are familiar with it?

A. Yes.

[fol. 37] Q. This statement states in Paragraph 1 that you bought this Trade Rite Market in 1958. When in 1958 did you buy it?

A. I took possession in August '58.

Q. From whom did you buy it?

A. Preston Bailey.

Q. What price did you pay for it, Mr. Barondess?

A. Ten thousand plus.

Q. Is that for the equipment plus the inventory?

A. That's right.

Q. You have a lease; is that correct?

A. Yes.

Q. I have here a picture, Mr. Barondess, and I ask you if that is a picture of your Trade Rite Market.

A. That is the place.

Mr. Alsup: I would like that marked as Barondess No. 1 for identification.

(The picture referred to was marked by the notary public as Barondess Exhibit No. 1 for identification, and is attached hereto.)

Mr. Alsup: Q. You say you bought it from Preston Bailey in August of 1958?

A. That's right.

Q. Where is your parking lot there, Mr. Barondess?

A. To the left of that building.

Q. Do you notice that your parking lot sign still has [fol. 38] the sign "Parking for Bailey's Market"?

A. That's right.

Q. I suppose sometime you will change it.

A. Well, people still refer to it as "Bailey's Market" and even though I have been there five years they still refer to it as Bailey's. I get a lot of checks made out to Bailey's Trade Rite Market. So anyway, he was there—he was there about 18-19 years and it is capitalizing on his name a little bit too.

Q. What did he do when he sold out to you, Mr. Barondess?

A. He is in the TV repair business.

Q. How large is your store?

A. Approximately 50 by 80, I would say.

Q. About 4000 feet?

A. Something like that.

Q. How old is it?

A. How long the store is there or how old is the building?

Q. How old is the building?

A. I wouldn't know, but I imagine it's about 30 some odd years, if I am not mistaken. But that is a guess.

Q. Is this what is known in the grocery business as a mom and pop type store?

A. It is a little bigger than a mom and pop store.

[fol. 39] Q. Do you know how many grocery items you carry?

A. Quite a complete line I would say. I wouldn't know offhand. I never took an itemized—how many items, but there is quite a few. Because I have practically a complete line of groceries.

Q. I have read that the smaller stores back in the '30's carried maybe four or five hundred items and the large supermarkets of today, the very large ones, carry as many as eight or nine thousand different items.

A. Well, I wouldn't say that I have eight or nine thousand but I would say that I have considerably more than four or five hundred, considerably more.

Q. What prior experience in the grocery business did you have prior to purchasing this store in August of 1958?

A. Well, I had business experience, but this is my first venture in the grocery business. I have been in business for the past twenty some odd years but this is my first grocery experience.

Q. You are what is referred to as a new entry in the grocery business in 1958?

A. Well, could be a new entry.

Q. Prior to that time what business had you been in?

A. Well, I have been in the restaurant business. I have always had some leases in hotels while I was in the restaurant business. I had some venture in the machine shop [fol. 40] business.

Q. Did you operate a cigar store?

A. That's right.

Q. That is one thing I always wondered about, Mr. Barondess. What happened to the cigar stores?

A. What happened to the cigar stores? It wasn't exactly a cigar store, it was more of a restaurant and beer place and all around. It was called a cigar store but that was an old trademark.

Q. Why did you decide to enter the grocery business in August of 1958?

A. Why? Why does anybody decide to go into business? To make a living.

Q. Had you made a study of the grocery business before getting into it?

A. Well, I investigated it, I have looked into it. I knew it wasn't an easy task but I felt capable that I could do it. I mean I have been successful in whatever I tried.

Q. And you have been successful in the grocery business too?

A. To a certain extent. I am not satisfied with my success. I am trying to get out, let's put it that way.

Q. Hasn't your store been profitable for you, Mr. Baron-

dess?  
[fol. 41] A. Well, I wouldn't call it profitable to the extent what I expected out of a business to return. I wouldn't call it profitable.

Q. Was this \$10,000 that you paid for the store all in cash?

A. Well, it was—I assumed some loans when I went into business.

Q. How much of your own cash did you put into this purchase?

A. Offhand I couldn't—I would have to look up my record to know just how much, because I borrowed money, which was personal cash, and it was entirely a different setup.

Q. You paid part cash and part loan to make up the \$10,000 purchase price?

A. That's right.

Q. Do you have a value on your store now?

A. Do I have a value on my store? Yes. I would sell today if I could get anywheres between six and eight thousand.

Q. Your statement says, in Paragraph 1, in 1959 you had sales of approximately \$190,000; is that correct?

A. Yes.

Q. Were those sales down in 1960?

A. They are down considerably.

[fol. 42] Q. What were they in 1960?

A. I would say about one hundred fifty-two-fifty five, something like that.

Q. One hundred fifty-two or one hundred fifty-five thousand. What were they in 1961?

A. They have been running around \$150,000.

Q. And '62?

A. '62 was, I think, \$144,000.

Q. Now 1959 was the year in which there was a strike; isn't that correct?

A. That's right.

Q. Your statement says that the sales of the chains were down in 1959 because of that strike. Do you recall that?

A. Yes.

Q. Would you say that your sales were up in 1959 because of that strike?

A. Well, the strike did boost me in sales, that's right.

Q. Do you have any idea how much?

A. I would say for the year about twenty-five to thirty thousand increase on account of the strike. It was a one-month period.

Q. When you bought this store from Mr. Bailey in August of 1958 was there a Country Cousin Store just one block west on Honolulu Avenue?

[fol. 43] A. It was not a Country Cousin but it was under ownership of Fred Rebal.

Q. Did Paul Palmer of Country Cousin buy that store from Mr. Rebal?

A. As recently as, I think, two years ago, something like that if I am not mistaken.

Q. How large is that store, the Country Cousin Store, Mr. Barondess?

A. How large it is? I wouldn't know exact dimension but I would say it's a good size store.

Q. Several times larger than your store?

A. Yes.

Q. Is that your principal competitor in the area?

A. No, I wouldn't say that.

Q. Your closest competitor?

A. He is a close competitor, yes.

Q. From what area does your store draw its customers?

A. From as far up as close to Foothill Boulevard and from the Montrose section and the La Crescenta area. It is all one small neighborhood.

Q. In general what would you say the radius of this draw area is, a mile or two miles?

A. I would say about two miles.

Q. Will you tell me what other grocery stores there were in the area, in this two mile draw area that you have [fol. 44] referred to, when you bought in August of 1958?

A. Well, the same area there was the only change of stores right now is one store, Ajax closed up and one new store Safeway built that came up. In my immediate area that is about the only change since I came in.

Q. Where was this Ajax Store?

A. Ajax was on Verdugo Road in the Montrose district.

Q. What is that building used as now?

A. What?

Q. What is that Ajax Store building used as now?

A. As far as I know it's vacant now He completely went out of business.

Q. Did you know Mr. Ajax?

A. It wasn't a Mr. Ajax, but I don't know the man personally that owned it. It used to be originally a Thriftmart Store and it was bought by an individual and I understand he went in there. Let's put it he lost everything he went in with. But I never knew the man personally.

Q. You don't know if he really lost everything?

A. Well, I understand he lost considerably to what the deal is—I mean the people that he dealt with, that he liquidated to get out from under it. And it wasn't a profitable enterprise for him.

Q. Do you know the man's name?

A. No, I don't. I never met the man personally. I [fol. 45] heard him called by the first name but I wouldn't remember his name.

Q. You say the only other change that has occurred is that Safeway has built a new store in the area.

A. That's right.

Q. Where is that located?

A. They are on Verdugo Road also in the Montrose area I would say about three or four blocks away from where Ajax used to be.

Q. When did this Ajax Market close?

A. Ajax, if I am not mistaken, it is within the last year and a half or so that he closed up.

Q. When did the Safeway Store come into the area?

A. About the same time.

Q. Before or after?

A. I think Ajax closed up after Safeway opened up. I wouldn't be too positive about it but I think he closed after Safeway opened up.

Q. You referred to Ajax and Safeway. What other grocery stores were in this area at the time you bought it in August of 1958?

A. There is a Shopping Bag, there is Gelsinger's Meat Market.

Q. I am sorry, I missed that.

A. There is Gelsinger's Meat Market, Shopping Bag, [fol. 46] and then on Honolulu there is another small one, Honolulu Market, which is a liquor store and small market. And that's on Honolulu about the stores that are there.

Q. On Honolulu. But you referred to your draw area as going up to Foothill and Montrose and up to La Crescenta.

A. There is a Spike Jones Market, corner La Crescenta and Foothill. There is a Bert's Market on Honolulu past Country Cousins. That is about the closest ones near my area.

Q. That is all within this two mile radius?

A. There are more small stores but I wouldn't have a record of all of them.

Q. In this time since you have been in the business, Mr. Barondess, since August of '58, has your study of the grocery business been largely confined to your immediate operating area?

A. No. I tried to look at the industry as a whole. I have been getting publications and know what's what, trying to keep abreast of things.

Q. In your own immediate area you have seen one store close up and one come in, in the time you have been in there; isn't that right?

A. Yes, that's right.

Q. Have there been any discount houses opening in that general area?

[fol. 47] A. No, not in my immediate area.

Q. What is the nearest discount house to you?

A. The nearest discount house I would say is practically

on the other side of Glendale near the industrial, Robert Morton, if I am not mistaken, which I would say is a good seven or eight miles from me.

Q. They have a food center in this discount house?

A. I haven't been in there but I think they have a certain amount of foodstuffs in there.

Q. In your reading of the trade papers since you have been in the business, commencing August 1958, you have read about discount houses opening up all over the area, haven't you?

A. Yes.

Q. With food centers?

A. That's right.

Q. Supermarkets?

A. Yes, I read of the A-1 in the Valley, what he is doing.

Q. In this same period of time have you read about the bantam markets opening up in this area, so-called Speedee Marts and Pronto Marts and TinyTim's?

A. Yes, I have read about them opening but there were none in my area.

Q. And you weren't concerned with them if they weren't [fol. 48] in your area, I take it?

A. Well, I read what they were. I mean I was familiar with their operation. But, as I say, in my area they did not open up so I didn't get a personal look at them.

Q. Have there been any new liquor stores opening up in your area in this time?

A. No. There is one pending now that is trying to open up and he is having a battle. Wait a minute, there is one opened up, that's right, about three years ago, about three blocks from me.

Q. Does this liquor store sell products besides liquor?

A. Such as bread and milk, as far as I know.

Q. And some canned good items?

A. Hardly any. I wouldn't say that.

Q. In your study of the business since August of '58 have you noticed that the liquor stores are selling more and more grocery items all the time in this area?

A. Well, I have seen several of them. I have seen some that are strictly liquor and I have seen some that are more grocery than liquor for the simple reason of trying to peddle off an expensive license for sales on low priced items.

Q. Have there been any drive-in milk depots opening up in your general area?

[fol. 49] A. I understand one opened up on Foothill about, I would say, three miles from me. There is one opened up on Foothill Boulevard.

Q. This is a matter which you have read in the trade papers that most of the grocers are really complaining about, isn't it, these milk depots?

A. Well, let's put it this way, they are no help.

Q. Pardon?

A. They are no help to the grocery business.

Q. This is something that is quite new since you have entered the business, isn't it?

A. That's right.

Q. They not only sell milk and ice cream but weiners and bread and potato chips and other items, don't they?

A. Yes.

Q. There seem to be more and more of them all the time in this area; isn't that true?

A. Well, as far as I know the Glendale area there is three of them. In the whole Glendale area that I know of. Two in Glendale proper and one up on Foothill Boulevard. I am not sure whether it is in the Glendale annex or outside the Glendale annex. But I know it is not far from me, about three miles from me somewhere.

Q. But you testified that you tried to keep generally familiar with what is happening in this Los Angeles and [fol. 50] Orange Counties area, didn't you?

A. That's right.

Q. You notice from the trade papers there has been more and more of this in recent years?

A. That's right.

Q. That is also true of the discount houses, isn't it?

A. Yes.

Q. What trade papers do you subscribe to, Mr. Baron-

dess?

A. There is quite a few of them. May I refer to this?

Q. Sure. You don't recall yourself?

A. The names are so interchangeable and I don't want to quote a wrong name. There is Supermarket News, there is the Food Mart. I don't recall the exact names of them.

Q. Do you read the Supermarket News pretty carefully?

A. As time allows I do read it fairly good.

Q. I have an article here, Mr. Barondess, taken from a recent issue of Supermarket News. I would like you to look at it and tell me if you read that article.

A. I remember seeing that article.

Q. That conforms to your general understanding based on your study of the industry, that article, doesn't it?

A. Yes.

Q. Haven't you observed in your study of the industry, Mr. Barondess, this frequently is the case that the chains [fol. 51] furnish the training and experience and background for people who decide, after they have got it, to leave the chain and go into business and start their own business and prosper?

A. Well, I could put it another way. The people that go in with the chains will, if they are smart, never tackle an independent business. After they observe the chain operation.

Q. You read this article about Mr. Hughes and Mr. Goodnight?

A. Yes. There is quite a few of them that have gained their experience and been good, and quite a few of them will be discouraged by the operation when they see what they have to compete with.

Q. Are you acquainted with Ted Wood of the Pantry Markets?

A. No, I am not acquainted with him. I mean I have heard of him.

Q. You are familiar with the Pantry Markets over in the Altadena and Pasadena area?

A. Yes, I have heard of them.

Q. You know Mr. Wood got started sometime in 1954 and has been very successful and has grown into a ten or eleven store chain?

A. I understand he is quite successful.

[fol. 52] Q. You know Mr. Goodnight left Alpha Beta in 1959 and started Michael's Markets, don't you? You read about that?

A. Yes.

Q. And he has been able to develop a successful chain in that time, has he not?

A. I would assume so.

Q. And there are others?

A. There are a few. But I wouldn't say they are plentiful. There are a few. There are some people that are quite outstanding but they can get enough finances and they are successful at certain things.

Q. This Paul Palmer of Country Cousins has a store near you and he is a good example of that, is he not?

A. Well, I don't think I would call Paul Palmer a good example of success in market operations.

Q. Why is that, Mr. Barondess?

A. Why is that? If I assume correctly, he has made his money on the real estate angle of it. He has bought markets cheaply when neighborhoods built up around it and it has paid off. And more or less he is developing his own, what you would call shopping center, bowling alley and stuff like that. So I wouldn't attribute it to his success in the grocery business.

Q. These properties that he has bought cheap, they [fol. 53] are basically grocery store properties and then the area builds up and he has sold them off.

A. Shopping area centers, in the one out at Thousand Oaks, it is complete shopping center areas. I don't think that he is doing fantastic with the one in Verdugo City.

Q. You are a member of Certified Grocers?

A. That's right.

Q. When did you join Certified?

A. When I purchased the store.

Q. I gather from the sign in the window, the picture we have marked as Barondess Exhibit No. 1 for identification, you get your milk from Knudsen Dairy?

A. That's right.

Q. Is Knudsen a well advertised milk?

A. Does Knudsen advertise milk?

Q. Is it well advertised?

A. It is well known milk. I don't think they are well advertised but it is well known milk in the area.

Q. It has good public acceptance?

A. It has public acceptance, that's right.

Q. And the price at which you sell that milk is fixed by State law, is it not?

A. Yes.

Q. And the price at which Von's sells Jerseymaid is fixed by State law, isn't it?

[fol. 54] A. The minimum prices, yes.

Q. You can't go less than a certain price. The milk depots have an advantage in that respect, don't they?

A. It is not the question of what you sell, it is a question of what discount you get.

Q. You don't know whether or not Von's investment in Jerseymaid pays them any more if they had invested the same amount of money in Knudsen stock, do you?

Mr. Coyle: You are arguing with the witness, Mr. Alsop, you are not asking questions.

The Witness: I wasn't trying to tell you that. I was trying to tell you that when the setup on the milk discount came out I was forced to eliminate—where I had two milk companies for choice of my customers, I was forced to go to one. Eliminate one so that instead of getting, let's say three or four cents from both of them I could get nine or ten cent discount from one. In other words, I was not able to give my customers the choice of milk. I had to stick with one in order to be able to come out on milk.

Q. Von's has an investment in Jerseymaid; right?

A. Right.

Q. And the price at which it sells that milk to the public is fixed by State law; right?

A. Right.

Q. Von's presumably makes money on its investment in [fol. 55] Jerseymaid; right?

A. I presume so.

Q. Just like Paul Palmer makes money in his investments in real estate.

A. Right.

Q. Paragraph 8, Mr. Barondess, of your statement says that on the basis of your continuing study of the retail grocery industry in this area you are in agreement with the defendants' exhibit showing that in the period between 1950 and 1958 the market share of the eight largest, the nine largest, the 15 largest and the 20 largest increased. You weren't making any study of the industry prior to your purchase of your store in August of 1958, were you?

A. No, I wasn't making a study of it but those figures

were pointed out to me and I agreed with them on the basis of my knowledge of the——

Q. Knowledge of what?

A. My knowledge of the grocery business when I went into it, that's all.

Q. Was it pointed out to you that the share of the top three declined between 1952 and 1960?

A. Decline?

Q. Yes.

A. From 1960 to what?

Q. From 1952 to 1960.

[fol. 56] A. I don't think it declined. I think they increased.

Q. What is the basis for that statement?

A. What?

Q. What is the basis for that statement?

A. Well, from what I have read and what I have been told, what I have seen, they couldn't have declined.

Q. Their sales might have increased but their market share might have decreased; isn't that possible, Mr. Baronness?

Q. Was it pointed out to you, when you were shown these exhibits, that the share of the top four declined between 1952 and 1960?

A. Decreased?

Q. Yes. Was that pointed out to you?

A. No.

Q. Was it pointed out to you that the share of the top five decreased between 1952 and 1960?

A. Not decreased.

Q. That was not pointed out to you?

A. No.

Q. All that was pointed out to you was that the share of the top eight, top nine, the top 15 and the top 20 increased between 1950 and 1958, is that correct?

A. Yes.

[fol. 57] Q. You state in Paragraph 9, Mr. Baronness, that Shopping Bag was a profitable operation prior to its merger with Von's, that you had observed the operations prior to the merger. What observations had you made on the basis of which you concluded that Shopping Bag was a profitable operation?

A. Well, they had considerable number of stores. I think it ran about 29 stores or something—28 or 29. Their stores were always well managed, well stocked. I know they were instituting their own warehouse and pulling away from Certified. And on that basis I concluded that their operation is successful.

Q. That was the basis on which you concluded that Shopping Bag was a profitable operation; right?

A. Yes. They were a growing organization.

Q. In that same period prior to 1960 Fox Markets was a profitable operation then, wasn't it?

A. Fox Market was supposed to have been profitable but I also heard that they were owing people a lot of money, such as Arden and Olson Eggs and stuff like that. And when I heard those astronomical figures what they owe, they are not paying bills, I was beginning to wonder.

Q. That was after they went into bankruptcy, wasn't it?

A. No. You heard those rumbles before they went into [fol. 58] bankruptcy.

Q. Not back in 1960 or '59, did you?

A. I always heard that Fox Markets were owing big sums of money to Arden's and Olson and several others.

Q. Fox was a rapidly growing concern up until 1961, wasn't it?

A. They were.

Q. And they had big stores?

A. Yes.

Q. And they appeared to be well managed?

A. Yes.

Q. How about McDaniel's, they appeared to be a very rapidly growing concern back in '59, '60 and '61, did they not?

A. Well, they were a growing outfit but I wouldn't put them in the same class as Shopping Bag.

Q. Why is that?

A. Well, McDaniel's, first of all they were a smaller chain. Second of all they did not indicate any saving such as their own warehouse, such as Shopping Bag. All that I didn't classify them in the same class as Shopping Bag.

Q. In your reading of these trade papers didn't you read about McDaniel's getting up at the end of 1960 to a 24-store chain?

A. I don't think it was that high. I think it was 16 or [fol. 59] 17 when I referred to McDaniel's. But I know definitely that he did not make any steps toward warehousing his own merchandise.

Q. Did you read in the trade papers that McDaniel's and Fox both expanded too rapidly with inadequate capital and got into financial troubles?

A. Yes.

Q. And they both went into bankruptcy; isn't that right?

A. Didn't McDaniel's sell off? Was McDaniel's bankruptcy or just a sell-off of individual stores?

Q. Didn't you read that McDaniel's sold off a number of individual stores to individuals and small chains?

A. That is what I read, they sold individual stores. Hughes bought several and somebody else bought several and all that stuff. But I didn't think it was bankruptcy.

Q. And then I think they went into bankruptcy later. Didn't you read the same thing about Yor-Way?

A. Yes.

Q. That was another case of a chain that appeared to be profitable and expanded rapidly and then got into financial troubles and went into bankruptcy in '61 or '62; isn't that right?

A. Well, that's right, they went—I don't know what caused them to go into bankruptcy, but from all appearances [fol. 60] they just couldn't—they were not expanding as rapidly as Shopping Bag, and also they did not have their own warehouse facilities.

Q. Are you sure of that, Mr. Barondess?

A. Yor-Way?

Q. Yes.

A. Yor-Way I don't think had their own warehouse.

Q. Are you sure McDaniel's didn't have a warehouse?

A. Not to the extent of what I mean warehouse in every bit of merchandising. Sure every chain has a certain amount of warehousing.

Q. Shopping Bag had a warehouse before it merged with Von's, did it not?

A. They had just completed it then, if I am not mistaken, about a year before or so, somewhere around that time.

Q. That was their new warehouse out in El Monte, wasn't it?

A. Yes.

Q. And they had one before that.

A. Well, they were buying a big share from Certified until they completed their new warehouse.

Q. And Von's had a warehouse before it merged with Shopping Bag, did it not?

A. I assume so.

[fol. 61] Q. You don't know?

A. About Von's I wouldn't say. I am not familiar with it.

Q. If they both had warehouses before the merger the merger didn't change that situation at all, did it?

A. If they both had warehouses, no.

Q. Before the merger Shopping Bag could get into shopping centers, couldn't it?

A. I assume they could. I wouldn't know but I imagine they could.

Q. You don't know if they were in any shopping centers?

A. If they were in any shopping centers? I know they had quite a few stores in shopping centers. They were contemplating new purchases at all times.

Q. And before the merger Von's could get into shopping centers; right?

A. Yes.

Q. And the merger didn't change that situation, did it?

A. It might have, it might not. I am not one to judge on that.

Q. You don't know?

A. I mean twenty million and twenty million is good credit, but sixty million is better.

Q. What other large chains do business in this area, Mr. Barondess?

[fol. 62] A. In the Glendale area?

Q. No. In the Los Angeles metropolitan area.

A. There is Ralphs, Alpha Beta, there is Cracker Barrel, but I wouldn't call them a chain.

Q. They are a small organization.

A. A small one in comparison. The Fox Markets that were taken over by American Foods.

Q. Food Fair?

A. Food Fair, I mean. There is Food Giant and there is two more or so, I think.

Q. Boy's?

A. Boy's Markets.

Q. A & P?

A. A & P I don't think is a big factor in the food market in the Los Angeles area for some reason.

Q. They have about 18 or 20 stores, don't they, Mr. Barondess?

A. They have a certain number of stores out here but I don't think they are a big factor in the food industry out here.

Q. From your reading in these trade papers would you say that A & P is the largest retail grocery concern in the United States?

A. Yes.

Q. Have you read that it does about five billion dollars [fol. 63] a year total business?

A. Somewhere around there. It's an astronomical figure for me.

Q. And for me too. You didn't mention Safeway.

A. Safeway is a major chain, that's right.

Q. Have you read that Safeway is the second largest national chain in the United States?

A. Yes. Is Safeway second or is Kroger's second?

Q. I have read that Safeway is but I will take your word for it, Mr. Barondess.

A. I don't know. It's a tossup. I would engage them with a slide rule. I was under the impression that Korger's has quite a substantial empire in the food business.

Q. Korger is not doing business here, fortunately, yet.

A. Fortunately. For how long I don't know.

Q. The American Stores, I think they are called Acme Markets, Inc., has entered this market by acquiring Alpha Beta; isn't that right?

A. Yes.

Q. And they are generally considered to be the fourth largest national chain; isn't that right?

A. They are considered pretty big, yes.

Q. And more recently Food Fair acquired these remaining Fox Stores out of bankruptcy and they are now doing [fol. 64] business here, you mentioned.

A. Yes.

Q. And they are generally considered to be the sixth largest national chain; isn't that right?

A. I presume so.

Q. You didn't mention Thriftimart.

A. I didn't think of it. Thriftimart is a factor in the Los Angeles food area.

Q. And Mayfair?

A. I told you there is quite a few of them. I didn't memorize them that they should stick in my mind immediately.

Q. As a matter of fact, there are a large number of so-called larger chains, a large number of smaller chains like Hughes and Shoppers and Pantry and so forth, are there not?

A. Yes.

Q. And an even larger number of smaller chains like Country Cousins and Michael's Markets and Cracker Barrel that you mentioned. A great number of those, are there not?

A. Well, from my observation I would say that they are on the diminishing point.

Q. You would?

A. Yes.

Q. That is based on your study of the industry?

A. Yes.

[fol. 65] Q. There are several single store operators doing business in Los Angeles and Orange Counties, are there not?

A. There are.

Q. Mr. Barondess, do you have any knowledge whatsoever that Von's intends to merge with anyone else?

A. No, I have no knowledge. But I assume that if the merger of Von's and Shopping Bag will be successful that eventually there will be a merger of several more.

Q. And that is pure imagination on your part? You are speculating, are you not?

A. Well, it is not imagination. It is the growth of a certain thing that you see just magnifies and grows. I mean if you take two chains merge and they are successful, eventually they will merge with a third and fourth and they could control the market.

Q. You have seen in this study of the industry that Fox engaged in a number of mergers and acquisitions, did you not?

A. Yes.

Q. And they got into financial trouble and went into bankruptcy; isn't that right?

A. Yes.

Q. And the same thing is true of Yor-Way, is it not?

A. I am not familiar on what their acquisitions and mergers were but I know they went into bankruptcy.

[fol. 66] Q. And you know McDaniel's made several acquisitions and got into financial trouble and went into bankruptcy, don't you?

A. I know they got into financial problems. What their acquisitions were offhand I don't know.

Q. These chains which you list in Paragraph 10 of your statement, do you have any knowledge that any one of them intends to engage in any merger in the future?

A. Well, I have heard talks that Ralphs and Kroger were negotiating on a merger. How much of it has gone through I don't know but I have heard of such talk.

Q. Just rumors?

A. Well, I wouldn't say it is rumors, but it is shop talk.

Q. Any others?

A. Offhand I wouldn't commit myself—I mean I couldn't pinpoint it.

Q. Paragraph 13 of your statement, Mr. Barondess, says that you would testify there have been a number of acquisitions and consolidations in the retail grocery field since 1948. Now, you entered into the business in August of '58. Before that you had been engaged in the restaurant, hotel and machine shop businesses; right?

A. Right.

Q. What mergers were you referring to in this Paragraph [fol. 67] graph 13?

A. As I say that was before I got in and I wouldn't remember the name, but it was pointed out to me there were certain mergers and I took that for granted.

Q. Who pointed this out to you?

A. I mean in the publications they were mentioned.

Q. What publications?

A. The trade publications.

Q. And you can't recall a single one?

A. No. Not everything would register with me, I regret to say.

Q. Was it pointed out to you that Fox had acquired Iowa Pork Shops?

A. I wouldn't recall that.

Q. Was it pointed out to you that Yor-Way had made some acquisitions?

A. It was pointed out that Yor-Way made acquisitions. I know it was pointed out that Mayfair and Arden's had combined in the food business. But I couldn't pinpoint every detail. My memory is not that good.

Q. You don't know whether Mayfair has sold more stores in this area than it has acquired, do you?

A. No.

Q. Paragraph 12 of your statement, Mr. Barondess, says that you would testify you face vigorous competition from [fol. 68] Von's. What Von's stores are you referring to in that Paragraph 12?

A. Well, there is a Von's-Shopping Bag Market in the area. There are several in Glendale. But the immediate area, when Von's right after the merger of Von's and Shopping Bag, there was a definite trend to cutthroat prices on staple items to lead customers their way.

Q. So you are referring to the Shopping Bag Store in your area?

A. I am referring to the Von's-Shopping Bag. It is not Von's-Shopping Bag any more.

Q. Before the merger this was a Shopping Bag store.

A. Yes.

Q. And before the merger there were Shopping Bag stores in Glendale?

A. Yes.

Q. No Von's stores?

A. Yes, Glendale had a Von's store.

Q. Where in Glendale?

A. No, I don't think Von's is in the Glendale area.

Q. Have you seen any lessening in the vigor of competition in this area since the merger of Von's and Shopping Bag?

A. Lessening?

Q. Yes.

[fol. 69] A. No. Since the merger I have seen an increase in the competition.

Q. You state in Paragraph 14, Mr. Barondess, that this

merger of Von's and Shopping Bag is a "major stride in increasing the market share of the large chains." Do you know how much this increased the market share of Von's when it merged with Shopping Bag?

A. Percentagewise?

Q. Yes.

A. Offhand I couldn't form any opinion. I assume it increased substantially.

Q. You assume that but you have no knowledge of what Shopping Bag's market share was before the merger?

A. In dollars and cents?

Q. No. I am talking about percentage of food sales in this area.

A. I wouldn't want to quote the figure, but I mean I have an idea, but it would be very rough.

Q. Will you give me the rough figure?

A. Shopping Bag alone?

Q. Yes.

A. Shopping Bag I would say had about ten per cent of the food sales.

Q. How much would you guess that Von's had before the merger with Shopping Bag?

[fol. 70] Mr. Coyle: Why ask him to guess? If you want guesses on the record let him guess if you want to.

Mr. Knight: What good is a guess on the record?

Mr. Alsop: Q. Will you answer, Mr. Barondess?

A. I would say they had about ten per cent, somewhere around there.

Q. What market share would you say Safeway had in this area before the merger of Von's and Shopping Bag?

Mr. Knight: Are you going to guess, Mr. Barondess?

The Witness: Well, I don't remember the figures so I couldn't quote accurately.

Mr. Alsop: Q. But you have studied the industry, you say, since you got into it in August of 1958.

Mr. Coyle: You are arguing with the witness, Mr. Alsop. He says he doesn't know.

Mr. Alsop: Q. I would like your best judgment.

A. I am not an engineering expert and I did not memorize every figure that I glanced at.

Q. This is what you had in mind when you said that this merger was a major stride in increasing the market share of the large chains?

A. In my opinion it is. It is a merger towards future mergers if proven successful.

Q. And if it proved unsuccessful it would discourage them, like Fox?

[fol. 71] A. In other words, if they were to go bankrupt, if it would benefit anybody; is that what you are trying to say?

Mr. Hughes: Is the question clear to you?

The Witness: No, I don't understand the question.

Mr. Alsup: Q. You say if it is successful it might encourage other mergers.

A. Definitely so. If that merger is successful it will acquire more and merge with more, and you will definitely have a monopoly in the food industry. That is the way I see it.

Q. This merger took place more than three years ago, Mr. Barondess. What mergers have occurred since then?

A. In the area?

Q. Yes.

A. The one that we mentioned, the Food—

Q. Food Fair picking up the remaining Fox Stores out of bankruptcy?

A. Yes, sir.

Q. Since the merger of Von's and Shopping Bag we have seen three chains, McDaniel's, Fox and Yor-Way, which had engaged in merger activity go into bankruptcy, haven't we?

A. I have seen McDaniel's go into liquidation. I don't know whether they went into bankruptcy. I have never heard of that proceeding. But I know that they have [fol. 72] liquidated their stores. For what reason, it could be that they found competition too stiff.

Q. How about Fox?

A. Fox, from what I assume, expanded too rapidly beyond their means of capital.

Q. How about Yor-Way?

A. Yor-Way I am not familiar with why they went, but they went under. I know they went into bankruptcy.

Mr. Alsup: No further questions.

Mr. Hughes: I would like to introduce the statement entitled "Testimony of Solomon Barondess" as Barondess Exhibit No. 2.

(The document referred to was marked by the notary public as Barondess Exhibit No. 2 for identification, a carbon copy of which is attached in lieu of the original.)

Cross-examination.

By Mr. Hughes:

Q. Mr. Barondess, in looking at Barondess No. 1, the picture of your store, I can't find the Bailey's parking lot sign that Mr. Alsup referred to. Would you point it out, please?

A. It is not in the picture. The sign would be to the left of that picture, but the picture did not take it in.

[fol. 73] Q. Did you name your market the Trade Rite Market or was that the name Mr. Bailey used?

A. That was there.

Q. Mr. Bailey called it the Trade Rite Market also?

A. All the time.

Q. Mr. Barondess, do you ever read financial reports in the trade journals on grocery chains?

A. I read when I get a chance, yes.

Q. Do you read the Wall Street Journal?

A. Wall Street Journal? Not too often.

Q. Did you ever have occasion to read Von's-Shopping Bag's annual reports in the Journal or in the trade journals?

Mr. Alsup: Are you talking now since the merger?

Mr. Hughes: At any time, presently.

The Witness: I have seen it on several occasions but the figures did not register with me too much. I mean I have seen the figures.

Mr. Hughes: Q. Can you recall ever having seen Shopping Bag's figures prior to the merger for the year 1959?

A. I think I recall it that I have seen it. But the figures

did not leave too much of an imprint. I mean I haven't got a "photogenic" mind on figures. I should have had my daughter, she would. She is a math major.

Q. Would you have recalled if you saw a local grocery chain was losing money?

[fol. 74] Mr. Alsup: I object on the ground that it calls for speculation and conclusion.

Mr. Coyle: Recollection is what he asked.

Mr. Alsup: He said, "Would you have recalled." I have no objection to "Did you recall" or "Do you recall."

The Witness: I recall there was several outfits that were mentioned losing money.

Mr. Hughes: Q. Do you recall that Shopping Bag was losing money in 1959?

A. There was a statement to that effect that they were.

Q. Mr. Barondess, you stated that your store is up for sale at the present time.

A. Yes.

Q. Why do you want to get out of the business?

A. I find competition too keen.

Q. Do you refer to any specific competition when you made that statement?

A. Well, I would refer to the big chain competition, unfair competition I would call it, even though there is a state law requiring that they sell with six per cent above cost. The major staples are being advertised way below cost and I just can't compete with it.

Q. Are you considering selling your store because of this milk depot down the street?

[fol. 75] A. Well, milk is a big factor also. Before the milk factor was in I was able to have two dairies, Arden and Knudsen. I had to consolidate and go to one, and that doesn't help me too much either.

Q. Is your primary competition the big chains?

A. Definitely.

Mr. Hughes: I have no more questions.

Redirect examination.

By Mr. Alsup:

Q. Your closest competition is the Country Cousins Store; isn't that right?

A. He is the closest store near me, but Country Cousin is not competition in the sense of ads—advertising in the paper. If you will compare ads you will see it. If you want I can bring you a couple of samples of the ads of the last few weeks. And I will show you that Country Cousins is not competition pricewise.

Mr. Alsup: I would like to have marked as Barondess No. 3 for identification the clipping from the Supermarket News, which he said he had previously read.

Mr. Hughes: Was it your statement that you read this article previously?

The Witness: I have noticed it. I said I have seen it.  
[fol. 76] Mr. Hughes: This particular article?

The Witness: Yes.

(The clipping referred to was marked by the notary public as Barondess Exhibit No. 3 for identification, and is attached hereto.)

Mr. Alsup: I have nothing further.

Recross-examination.

By Mr. Hughes:

Q. Would you of your own personal knowledge know if that article contains matters which are true?

A. No.

Mr. Hughes: No more questions.

Redirect examination.

By Mr. Alsup:

Q. This is the type of thing, though, that you read in the trade papers all the time and generally rely upon, is it not?

Mr. Coyle: You are arguing with him, Mr. Alsup.

The Witness: Well, I read these things and some of

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them I draw my own conclusions, some of them I disregard or don't agree with.

Mr. Alsup: Q. You have no reason for disagreeing with Mr. Hughes' success, have you?

[fol. 77] A. No.

Q. Or Mr. Wood's? You know he has been successful, don't you?

A. Yes.

Q. You have read about Mr. Goodnight starting in the business a little after you did, after leaving Alpha Beta and opening a single store and becoming a very successful small chain, haven't you?

A. I have heard it.

Q. That is common knowledge in the industry, isn't it?

A. Yes.

Mr. Alsup: No further questions.

Mr. Hughes: That is all.

Mr. Barondess, do you agree to waive your signature to this deposition?

The Witness: I do.

Mr. Hughes: It is agreeable with counsel for Von's?

Mr. Alsup: It is agreeable with the understanding that it will be filed as his testimony.

Mr. Coyle: I don't understand about this being filed as his testimony. It is his deposition and we waive signing it.

Mr. Alsup: It will be filed as if it had been signed.

Mr. Coyle: It will be treated as if it had been signed.

Mr. Alsup: Right.

[fol. 77a] TESTIMONY OF ADRIAN BYNUM

If called to testify, Adrian Bynum would testify as follows:

1. Up until July 29, 1962, he was a partner in the operation of Birmingham Market, a grocery store located at 17261 Vanowen Street, Van Nuys, Los Angeles County, California. He had been part owner of Birmingham Market for over four years. He had been in the grocery business for most of his life. For the last 12 years he has been a part owner of a grocery store. The gross sales of

Birmingham Market in 1959 were about \$650,000. He recently completed arrangements for owning and operating a motel in Crescent City, California. His current home address is 1928 Crebs Street, Northridge, California.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, when Mr. Bynum operated Birmingham Market, he closely inspected all grocery advertising by the major chains as it appeared in the metropolitan newspapers. He also regularly reviewed grocery advertising appearing in local papers. He subscribed to the "Black Book," a booklet similar to the Key Services book, and followed the prices of all of the major [fol. 77b] chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly read, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

[fol. 77c] 5. He has observed that the decline in the num-

ber of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchased from Certified Cooperative and this enabled him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that [fol. 77d] large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of Certified with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.5 per cent to 41.7 per cent; the market share of the 15 largest chains

increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the [fol. 77e] sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

12. He would testify that he is aware of the recent state-[fol. 77f] ment by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faced very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocery. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 78] TESTIMONY OF ARTIE L. CARPENTER

If subpoenaed to testify, Artie L. Carpenter would testify as follows:

1. He is the owner of Carpenter's Market, 1712 West Main Street, Alhambra, California. He purchased this store in 1959. His store had gross sales of about \$588,000, in 1961.

2. For ten years prior to opening his own store, he worked for Hiram's Market, where he worked up from a clerk to store manager. Prior to his association with Hiram, he had worked in a grocery store in northern California.

3. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, he closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

4. On the basis of his continued study of retail grocery

merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

5. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

6. He has observed that the decline in the number of grocery stores in the area also arises from the increasing [fol. 80] size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result fewer grocery stores are needed in the area to serve a comparable number of people.

7. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

8. He would also testify that he purchases from a co-operative group known as Orange Empire and this enables him to get certain of the advantages, such as quantity dis-

counts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased [fol. 81] their purchases voluntarily when they developed their warehousing and distribution systems. Thus they have combined the advantages of the cooperative with direct purchasing and a highly developed distribution system. In addition some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

9. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

[fol. 82] 10. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

11. He would state that Von's and Shopping Bag, along with Ralph's, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

12. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory of the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

13. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of [fol. 83] Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

14. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

15. He would state that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major strike in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

[fol. 84] DEPOSITION OF ARTIE L. CARPENTER, taken on behalf of defendants, at 433 South Spring Street, Los Angeles, California, commencing at 2:00 P.M., Monday, April 15, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

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ARTIE L. CARPENTER, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Alsop:

Q. Mr. Carpenter, would you state your name and address, please.

A. Artie L. Carpenter; my home address is 820 North Almansor.

Q. What is the address of your store?

A. 1712 West Main Street, Alhambra.

Q. We have been furnished by the attorneys for the government with a statement as to what you would testify to if you were subpoenaed as a witness in this case. Do you have a copy of that statement in front of you?

A. I do.

Q. Have you read it recently?

A. Yes.

[fol. 85] Q. Did you read it carefully before you signed it?

A. I did.

Q. Do you recall when it was that you did sign it?

A. Not the exact date, no, sir.

Q. Can you remember the month?

A. Approximately three months ago.

Q. It states that you purchased this store in Alhambra in 1959.

A. That's true.

Q. Can you recall when in 1959?

A. I leased the store in March of '59.

Q. You leased it in March?

A. Yes.

Q. Did you thereafter purchase it?

A. No. It isn't my legal property, no. It is still leased.

Q. So Paragraph 1 really means that you purchased a lease; is that correct?

A. That's true, sir.

Q. I think this Paragraph 1 states that your gross sales in 1951 were about \$588,000. Can you tell us what your gross sales were in 1962?

A. Yes. \$592,000.

Q. What was your investment when you purchased this lease in 1959?

[fol. 86] A. The lease purchase or the stock?

Q. How much did you pay to get the lease?

A. Well, we had a total investment of approximately \$19,000 or \$20,000.

Q. Was that just for the lease or did that include some fixtures and merchandise?

A. No, no, just for the lease. It was a signed lease with the last month's rent paid in advance.

Q. So the \$18,000 really represented purchase of fixtures and inventory?

A. Inventory, yes. That is capital that I had. That isn't taking in the borrowed moneys.

Q. That is you invested \$18,000 of your own money.

A. Of my own money.

Q. Then you borrowed some additional money for inventory?

A. That's true.

Q. Can you give us some idea of what the present net worth of your business is?

A. Well, it is kind of hard to sum up. I would say probably my net worth of the business is probably around 30,000.

Q. \$30,000?

A. Yes.

Q. Have higher estimates been made, do you know?

[fol. 87] A. Yes. There would probably be higher estimates made. I am taking in consideration the depreciation of fixtures that I have depreciated down.

Q. That is fixtures might have a greater net worth than they do for tax purposes; is that correct?

A. They are worth more to me, sir, than they are to anybody else, yes.

Q. Taking that in consideration can you give us some idea of the present net worth of your business, the actual?

A. Well, actual net worth, Mr. Alsup, it is pretty hard to say. I have been trying to borrow moneys on it. Nobody seems to think it is much.

Q. Give me your best estimate, please.

A. Roughly speaking I would say that 30,000 would take in our net worth.

Q. Your father might have said it was \$85,000—

A. Well, he might say \$85,000, \$100,000, or what. I wouldn't say that we were worth that kind of money, I mean to sell, to sell out. Now, this is something that might be worth—Like I say, things are worth more to me than if you go and try to borrow or make a loan. They look at your paper.

Q. Did you remodel this store when you acquired it in 1959?

A. Painted the inside.

Q. This looks like an old Safeway store. Is it?

[fol. 88] A. It's an old Safeway store.

Q. Did you acquire it from Safeway or from someone else?

A. No, from an individual.

Q. Had they acquired it from Safeway?

A. I don't know, Mr. Alsup, if they acquired it from them or not.

Q. Do you compete with the Rite-By store at 2800 West Main?

A. I hardly think so.

Q. That is a tiny, little store?

A. It's a small store, yes, on the south side.

Q. Have you been in it?

A. I have been in there a couple of times, yes.

Q. And that is, oh, roughly 11 blocks from your store, a little over a mile?

A. I would say approximately a mile, yes.

Q. Are you closer to that Rite-By Store than you are to the Von's Store on West Main Street?

A. No, I am closer to Von's.

Q. Are you?

A. I believe so.

Q. Are you closer to Ralphs than you are to Von's?

A. I am about a block's difference, yes, a short block.  
[fol. 89] Q. Ralphs is closer to you by one block than the Von's Store; is that right?

A. It is closer to me by one block, yes.

Q. Do you compete with a Star Market there at 2289 West Main?

A. Well, I feel the store has their customers and I have mine. It would be kind of hard to say as to what type of competition we actually have with each other. I have a somewhat different type operation than Star Market. Naturally I guess everyone thinks their merchandise is better, but I don't think there is a great deal of competition between the Star Market and myself.

Q. Have you been in the Star Market?

A. Yes. Not real recently but I have been in there.

Q. I have been in your store, Mr. Carpenter, and I must compliment you upon the attractive display and the cleanliness. What was your impression of the Star Market there at 2289 West Main?

A. Well, it is just another market.

Q. Do you feel that they have their merchandise as attractively displayed as you do?

A. No. I think I am the greatest merchandiser there is if I have the time to do it.

Q. Do you feel that the Star Market is a clean type of market that would attract customers that would be attracted to your market?

A. I think the personnel in the Star Market certainly feel that they have a duty toward their customers. I think that they try, yes.

Q. How does their equipment compare with yours?

A. My equipment is newer, yes.

Q. Your displays are better, aren't they?

A. Well, I haven't been in the Star lately, Mr. Alsup. It actually has been, I would say, a year since I have been in the Star Market. I couldn't truthfully say what type of merchandising that they are doing right now.

Q. Is that closer to you than this Ralphs Market that we have mentioned?

A. Yes, it is closer.

Q. Then it is closer to you than the Von's Market we mentioned?

A. I believe it is, yes. Naturally it is.

Q. How far did you say you felt the Von's Market was from you?

A. In distance of blocks?

Q. Yes.

A. Oh, I think three-quarters of a mile would just about pace it off.

Q. Was that Von's Market there when you acquired your store in 1959?

[fol. 91] A. No.

Q. When was it built?

A. It was opened April 15th of last year.

Q. Was the Ralphs Market there when you bought your store in 1959?

A. Yes.

Q. The existence of the Ralphs Store didn't discourage you from taking this market, I take it.

A. I was quite a bit younger then. Four years, you know, you put a lot of experience under your belt.

Q. What other stores in the area do you compete with, Mr. Carpenter?

A. I compete with Safeway.

Q. Where is the Safeway Store located?

A. On Commonwealth and Atlantic.

Q. How far away is that?

A. By distance approximately three-quarters of a mile.

Q. Any other stores in the area you compete with?

A. Well, there is Gertmenian's Market across from Safeway. There again I don't feel that I am competing too much with Gertmenian's Market.

Q. Why is that?

A. They are altogether more or less a different type of operation. They are produce dealers in effect, a lower grade of produce from what I carry.

[fol. 92] Q. They do carry a line of groceries there at Gertmenian's place?

A. Oh, yes.

Q. Mr. Gertmenian just bought that market recently, didn't he? Wasn't it known as the Commonwealth Market?

A. It was known as the Commonwealth Market, yes.

Q. And Mr. Gertmenian bought it despite the fact that

it was directly across the street from a newer and larger Safeway?

A. Well, he bought it when Safeway was there, yes.

Q. You have named Safeway, Ralphs, Gertmenian's, Star and Rite-By. You testified that you felt you don't compete very much with Rite-By and Gertmenian. I gather that the reason you feel you are not in competition with Gertmenian is because they carry a poorer grade of produce; is that correct?

A. Well, yes, I feel that way. I think they are merchandisers in their own field, doing that type of merchandising.

Q. You feel that you attract a better class of customers?

A. I feel that I do, yes.

Q. Are there any other markets in your area that you compete with?

A. Well, we feel that we have competition on Valley [fol. 93] Boulevard. The distances aren't too great from us and I am sure that you are going to ask about our new Uni-mart that is down below me.

Q. What stores on Valley Boulevard do you compete with?

A. We have Shopping Bag on Valley Boulevard.

Q. How far away is that?

A. I would say approximately a mile in distance.

Q. Any others?

A. Anything outside of that circumference it would be hard to say, Mr. Alsup. I have customers from Temple City, people driving by and stop and see me. But I don't think any further distance than that that I could say.

Q. Give us some estimate of the percentage of customers that you draw from this mile radius that you have referred to.

A. The percentage of my customers?

Q. Yes.

A. Well, 98 per cent.

Q. From this mile radius?

A. Yes.

Q. What is the size of your market, Mr. Carpenter?

A. The over-all building is 6,000 square feet.

Q. How much of that is devoted to store or selling area?  
[fol. 94] A. Approximately 4300.

Q. You mentioned Unimart. Would you tell us about that?

A. Well, so far we are happy. I mean I haven't got it.

Q. Unimart has just opened and how far away would you say that is from you?

A. Oh, six blocks.

Q. On the same side of Main Street?

A. It is the same side, yes.

Q. And that contains a large supermarket in it, does it?

A. In its field of supermarketing, yes, it has groceries there.

Q. That is run by Food Giant, isn't it, that supermarket?

A. Yes, I understand that.

Q. Would you tell us why so far you are happy about Unimart opening in your area?

A. They didn't hurt me like Von's did when they opened.

Q. Did they help you?

A. I haven't had an increase but I haven't had a decrease.

Q. Do you feel that it might help you?

[fol. 95] A. That is a tough one. Naturally everybody likes to hope for the best, Mr. Alsup, but I can't depend on them to try to help me, no. I will have to——

Q. You once told me that it might help you, didn't you?

A. I might have when I talked to you over the phone, I might have said that, Mr. Alsup.

Q. Is that because a large discount house of this type attracts people into a neighborhood and you will get your share of the business?

A. We kind of felt that maybe that might happen, yes.

Q. In Paragraph 3 of your statement, Mr. Carpenter, you say that you must be kept well informed on every change in marketing conditions in the Los Angeles metropolitan area. Can you tell us what changes you have observed in the marketing conditions since you have been doing business in this area?

A. Well, there has been a considerable amount of changes, Mr. Alsup. I just don't know any one certain thing that I would be able to make you happy on. It actually leads back to approximately a year ago when we came into what is called the no limit law.

We had to change our different methods of merchandising in our stores at that time. We tried to stick by the

law. We feel that it is a rather decent law not to sell below [fol. 96] cost. And, of course, prior to this we were doing our own thinking, I mean having the right to limit to our customers in a decent amount. We had to change up our advertising a lot. We found that we came in and cut the prices in a lot of our staple items, and this was merely following the changed ideas and which probably represents 25 per cent of our gross sales going through the doors.

Our net percentages in our business hasn't been hurt, we have got ourselves adjusted. But we are not able to use a weapon, at least we are now, we don't dare to advertise an item ten cents below our cost in order to maybe create a little more traffic into our stores. We found that most people have been abiding fairly well to this law. There are some instances I have seen prices a little lower. Maybe they got a little better buy on it than I did. But we haven't been able ourselves to create more advertising on our own part. I think that everyone in the grocery business realizes that they are only allowed a certain per cent of their gross sales for advertising and we do try.

Q. How do you advertise?

A. We use the Alhambra Free Press. It's a weekly paper.

Q. They use throw-aways?

A. This is supposed to be a paid circulation. It first was a throw-away but it is more or less pay if you want [fol. 97] to pay. It isn't as effective as your mailers or your big metropolitan newspapers or your big city newspapers.

Q. Do you use mailers?

A. No, sir, I don't.

Q. What other changes have you seen in the recent years? Would you consider the discount houses a change in the marketing condition?

A. Well, we have had discount houses for as long as I can remember, Mr. Alsup, and there hasn't been as many. It seems to more or less be in a experimental age right now as to whether they are going to really be something or not. I think they are here to stay. Some might turn into bowling alleys, who knows. But some of them will be here. I have seen some of them that are very successful in their operations.

Q. There has been quite a rash of them in the last two or three years all over the area, hasn't there?

A. Well, Southern California is a real competitive area. I think we are all aware of that.

Q. How about bantam stores, has that been a change in marketing conditions in recent years?

A. Well, I am not too awfully familiar with the bantam operations. I do know that a couple of them have gotten in some serious trouble, or at least from what I have read in the Commercial Bulletin. It has been taken over [fol. 98] by someone else. As to the amount of business that they are doing right now, I really don't know.

Q. Do you know how many of them have entered the area in the last five years?

A. In our own immediate area there hasn't, to my knowledge, been any. I have seen them in my drives, I mean from here to, say, Long Beach. I have seen the Speedee Marts in some of the small areas.

Q. I gather you are primarily interested in your business in your own immediate area over in Alhambra; isn't that correct?

A. Well, naturally my biggest interest, Mr. Alsup, is with me in my area. Of course, as a whole we have our future to look out for too.

Q. That is for sure. In these various trade papers that you have read, and you mentioned Commercial Bulletin and Super Market Merchandising—That is really Super Market News, isn't it?

A. Well, Super Market News, yes.

Q. And Chain Store Age and Progressive Grocer. Have you seen articles in recent months by so-called experts that the discount house will put the supermarkets out of business?

A. I am sorry to say I haven't read that article yet. I don't think it will ever put us out of business. Not the discount houses, no. I didn't read that article, though, [fol. 99] Mr. Alsup.

Q. In Paragraph 4, Mr. Carpenter, you refer to your continued study of retail grocery merchandising in the Los Angeles metropolitan area. You state that you would testify that in the period since 1950 the number of single

store grocery retailers operating in the area declined. Have you made any actual study yourself along that line?

A. Mr. Alsup, I have seen a few of the markets closed up and, of course, with the co-op there has been—maybe this is one reason that we are having such a tough time right now trying to get financing, because a lot of them have fell by the way in the last year or so, in the last couple of years. I am sure that probably we could come up with quite a few.

Q. You haven't made any study yourself?

A. I haven't went out, no. I am afraid I don't have the time to do that.

Q. You haven't made any study in Orange County, I gather?

A. No. I am not in the Orange County area.

Q. Have you seen some failures of some of the larger chains during the last couple of years?

A. Well, seen them, yes. In certain respects I have seen them taken over by other chain markets. I imagine that they were in some sort of financial difficulty.

[fol. 100] Q. From your study of the trade papers you know, don't you, that Fox Markets went into bankruptcy?

A. Yes, I saw that in big black letters. That was in the newspaper and also in our trade magazines.

Q. And based on your experience in the industry would you say that has contributed somewhat to the tightening of credit?

A. That might contribute to some of it, yes.

Q. From your study of the trade papers did you observe whether in 1951 McDaniels went into bankruptcy?

A. Yes.

Q. And before it did that it sold off a number of its stores to single store operators, did it not?

A. I believe that to be correct, yes

Q. And Food Fair, which is one of the nation's largest national chains, has taken over the remaining Fox Stores; isn't that correct?

A. I believe that is all settled now. I don't know. To my knowledge it is, yes.

Q. But prior to that a number of the Fox Stores were sold off to various smaller chains and individuals, were they not?

A. I don't know of any of them personally, Mr. Alsup. I do know a couple of the McDaniel's stores, but not Fox Markets, I don't know. I know they had taken over the Iowa [fol. 101] Pork Shop Markets, and it might have been that the Iowa Pork Shop Markets might have been taken over by some individuals. But I don't know if any of the Fox Markets themselves.

Q. What about Yor-Way, what do you know about that situation?

A. They folded up.

Q. Went into bankruptcy?

A. Yes, I imagine they were in bankruptcy.

Q. According to your studies of these trade papers, Mr. Carpenter, wasn't it generally considered that these three chains got into financial difficulties because they expanded too rapidly with inadequate capital?

A. I hadn't seen a new Yor-Way Market in I don't know when. Naturally we seen a lot of the Fox Markets. As to why they folded, I imagine that in the Fox case it could have been overexpansion, yes. In the Yor-Way I couldn't say.

Q. You didn't see anything about it in this various reading that you have done in the trade papers?

A. I have read about the Yor-Way Markets. Of course, the Yor-Way Markets had never been—I was never too particularly interested in them. I never felt toward them as any type of competition, either, not the Yor-Ways.

Q. In this same period that you refer to in this [fol. 102] Paragraph 4 have you known of others like yourself who have started in business with one store and been able to stay in business?

A. Yes, I know of people that are still in business, yes.

Q. Do you know some who have started in this period beside yourself?

A. I know of one of other person, yes.

Q. One other?

A. Yes. On Valley Boulevard.

Q. Who is that?

A. Bob Sorenson's Market on Valley Boulevard.

Q. In your readings of the trade papers have you read at all of Ted Wood and his Pantry Markets?

A. Yes. I wonder where he is getting all of his money. Maybe he is a good merchandiser.

Q. Now will you answer the question?

A. Yes, I have read about Ted Wood.

Q. Didn't he get started sometime in about 1954?

A. I thought it was sometime before that, but I paid particular attention to him within the last three or four years.

Q. He started with one market, didn't he?

A. I believe that's correct, yes.

Q. Do you know how large his chain is now?

[fol. 103] A. He has probably 10 stores now.

Q. In your readings of the trade papers have you read about Joe Goodnight of Michael's Markets?

A. Yes.

Q. What have you read?

A. Joe does a good job.

Q. Did he leave Alpha Beta in 1958 and start his own business?

A. I believe it was around there.

Q. What has happened. How many stores does he now have, do you know?

A. I don't know what number of stores he has.

Q. Do you have any idea?

A. I might be thinking of someone else, but I thought he had four stores. I don't know.

Q. Do you recall reading in the trade papers or from your study of the industry about how Joe Hughes got started in 1952?

A. Yes.

Q. Did he start with a one-store operation?

A. He had one store, yes.

Q. Do you know how many stores Hughes Market has now?

A. They have eight or ten stores. They have several on the drawing boards, I imagine from what I have seen.

[fol. 104] Q. Do you know Jerry Fleishman, one of the government witnesses?

A. Jerry Flashman?

Q. Fleishman.

A. No.

Q. Do you know the witness who testified this morning, Mr. Don Fairbank?

A. I don't know him personally, no.

Q. I imagine if you counted you could think of a number

of others who have been able to start in this period since you have become familiar with the grocery business in this area, couldn't you?

A. Yes, I have known of a few that have started back in the fifties.

Q. And they have been successful, so far as you know?

A. The few that I know of, yes. They appear to be.

Q. Are you acquainted with the two young men who purchased Mr. Irvine's market in El Monte and now call it the Crower's Market?

A. I don't know them, no. I didn't even know it was Irvine's Market.

Q. Do you know whether they have a successful operation?

A. It just seems to be.

Q. Do you know of your own knowledge whether there [fol. 105] are actually more or fewer grocery concerns doing business in this area now than there were in 1950?

A. I would say, Mr. Alsup, yes, there is fewer.

Q. Do you have any idea how many fewer?

A. I don't know the amount, no, the few amount.

Q. And what has been your impression as to size of these markets that you have observed that have gone out of business? Are they what you would call mom and pop's primarily?

A. No. I have seen a few 10,000 square foot markets that are not in operation now.

Q. I have seen a larger one with the McDaniel sign on it, a for lease sign on it on the San Bernardino Freeway. Have you ever noticed that?

A. Yes, I believe I have.

Q. In Paragraph 5 you refer to shopping centers, the difficulty that a single store operator or the inability of a single store operator to get into the shopping centers. What effort have you made to get into a shopping center?

A. Well, I have never had a chance to get into one. I have tried to make studies as to what I might be able to do to get into one. Naturally no one is going to go out and say, "Hey, I've got a shopping center." But you see them spring up and it's all cut and dried before they go, I guess. [fol. 106]

Q. What effort have you made to get in?

A. My own particular self?

Q. Yes.

A. Well, I haven't made any.

Q. In these studies that you have made of the shopping center problem have you become aware of the bills which have been pending in Congress for the past two or three years which are designed to help small businesses get into shopping centers?

A. Yes, I have read about it.

Q. Are you aware of the fact that Ted von der Ahe says he believes such legislation should be enacted?

A. No, I wasn't aware of his statement on that, no.

Q. Do you believe if such legislation were enacted by Congress that it would be of help to you smaller businessmen?

A. It could be, I guess, yes.

Q. How can breaking up the merger of Von's and Shopping Bag help you on this shopping center problem?

A. It might lessen the encouragement of other mergers, Mr. Alsup.

Q. Whey you say that it might, you are speculating?

A. No, I am not speculating, no.

Q. What is the basis for your statement?

A. We naturally have concern about it. In all truth [fol. 107] we know that definitely it has lessened in competition worked by this merger and we feel that what would prevent the other larger chains of all merging together.

Q. You say you notice it has lessened competition, this merger?

A. Well, certainly it has lessened competition between Von's and Shopping Bag.

Q. What study have you made as to competition which existed between Von's and Shopping Bag before the merger?

A. Well, they were definitely in competition with each other.

Q. In how many places?

A. Well, in my own city they were in competition with each other. There was Von's and Shopping Bag in Alhambra.

Q. Would you say that competition generally in the area has been lessened?

A. They have a rather large area to cover. I would think that in general, yes, it would.

Q. Throughout the Los Angeles metropolitan area, consisting of Los Angeles and Orange Counties?

A. I would say, yes, it would.

Q. On the basis of overlap between Von's and Shopping Bag stores?

A. They do have a few stores that overlap. I don't know the distance of draw that our markets have nowadays. [fol. 108] Maybe it isn't as great as it used to be, but they still have a drawing power of four and five miles.

Q. What is the basis for that statement, Mr. Carpenter?

A. We are speaking of our competition between the two markets, Mr. Alsop. Naturally when they merged together there is no competition between them, regardless of whether they overlap or don't overlap.

Q. You referred to a four or five mile draw area of a Von's or Shopping Bag Store. What was the basis for that statement?

A. Well, the basis of it would be primarily to the shopping centers, the markets that are in the shopping centers.

Q. Have you made any study of any draw area of any Shopping Bag store?

A. Well, Von's says, "Shop at Von's Markets." In Alhambra it certainly draws some of my customers into that area.

Q. You said that was less than a mile away.

A. No, not the one on Valley Boulevard.

Q. You said that was less than two miles away.

A. No, I don't believe I stated the distance between my store and the Valley Boulevard shopping center.

Q. And it's on the basis of that that you say that Von's and Shopping Bag Stores have a draw area of four to [fol. 109] five miles?

A. Yes.

Q. Nothing else?

A. No, I don't think so.

Q. I think you said, "We know competition has been lessened." How do you reconcile that with your statement in Paragraph 13 that you would testify you face very vigorous competition from Von's?

A. Well, speaking of Von's, naturally we are speaking of Von's and Shopping Bag.

Q. And you face vigorous competition from both of them?

A. Why, certainly.

Q. I am a little puzzled now, Mr. Carpenter. In view of that I would like you to tell me how competition has been lessened generally in the Los Angeles metropolitan area, consisting of Orange County and Los Angeles County, by this merger of Von's and Shopping Bag. It hasn't lessened the competition with you.

A. You mean my competition hasn't lessened, which it hasn't.

Q. Right.

A. That's true, it hasn't lessened it.

Q. So the most then that you mean is that competition which might have existed between the particular Von's and [fol. 110] and Shopping Bag Stores no longer exists; is that correct?

A. Why, yes.

Q. I would still like to get you to explain to me how the merger of Von's and Shopping Bag would change the shopping center situation. Shopping Bag could get into the shopping centers before the merger, couldn't it?

A. Yes, I am sure they did, yes, that's true.

Q. And Von's could and did before the merger?

A. That's true.

Q. Please explain to me how this merger of Von's and Shopping Bag that we are talking about here changed the shopping center situation.

A. I don't think I put any particular emphasis that it would change the shopping center aspect any. I don't think they will ever be changed anyway.

Q. You don't have much confidence in Congress passing these bills, I take it.

A. Maybe not.

Q. Now, if the merger of Von's and Shopping Bag were broken up wouldn't you have one more concern competing for a shopping center site?

A. I don't really think so, Mr. Alsup. I don't really see how that would have any bearing on the case, I mean if it was split up. As far as me getting into a shopping center, if they were to split up or stayed whole, I don't think that [fol. 111] this might make any difference in my own particular self.

Q. Can you think of anyone it would make a difference to?

A. Yes. I think it could probably make a lot of difference. I am sure that in my own self if I was building a shopping center that I would probably rather have Von's and Shopping Bag in it than I would Carpenter's or somebody else.

Q. If you were building a shopping center prior to the merger you would rather have had a Shopping Bag in it than a Carpenter's; isn't that right?

A. The answer was that I would flip a coin as to whether it would be Von's or Shopping Bag if I were the one that was building it.

Q. But in either case you would choose one or the other rather than a Carpenter's.

A. Yes, I would.

Q. And that would be true if you were a shopping center developer with respect to any chain with a Triple A financial credit rating, wouldn't it?

A. Well, that is true enough as far as Triple A credit references. It doesn't necessarily mean that it's the name, the draw power that either one of these stores do have over and above maybe someone else.

Q. You say in Paragraph 7 that you would testify [fol. 112] that single store operators and small chains do not have their own highly developed distribution system. I ask you, does a single store operator need a highly developed distribution system?

A. I don't think a single store would. I don't know how he could upkeep it. No, that's true.

Q. You are a member of Orange Empire, are you not?

A. Yes.

Q. Does Orange Empire have a highly developed distribution system?

A. Yes, they do.

Q. Do you know whether or not it does a greater volume in sales to its members than Certified Grocers of California?

A. Well, they are the two biggest. I would say that it would be the last year that Orange Empire did have a larger distribution than Certified. But they are in three states.

Q. And would you say that Orange Empire is your distribution system except for milk and meats and produce?

A. Yes.

Q. And it operates large warehouses, does it not?

A. True.

Q. And it is serviced directly at its warehouses by railroad shippers, is it not?

A. That's true.

[fol. 113] Q. And it operates large trucking facilities, does it not?

A. True.

Q. Its warehouses and its trucking facilities are larger than those of Von's, are they not?

A. Yes, I imagine so.

Q. Would you read the last sentence of Paragraph 7, Mr. Carpenter, and tell me how Von's and Shopping Bag have an advantage over you in terms of inventory control?

A. Because of owning their own warehouses they have control—better control over their inventory by distributing it to the stores themselves.

Q. Better than Orange Empire can do it for you?

A. Well, if we are speaking of Orange Empire and their inventory control, I would say that Orange Empire had an inventory control also. But as to how Orange Empire is going to know how much their members are going to buy, we have a lot of outs too on our orders. Whereas in larger chains operating their own warehouse they can have fewer outs, fewer shortages. Orange Empire can't know. All they can do is go by their past records as to how much their members are going to buy from them.

Q. Isn't that basically what a chain like Von's must do on the basis of what its stores are going to sell?

A. Well, certainly that's true.

[fol. 114] Q. I have heard it said that if a single store operator doesn't have absolute inventory control he certainly doesn't belong in the business. Would you agree with that?

A. Well, you have to have a certain amount of inventory control, true. I couldn't say how long it's going to take them to put themselves out of business by not having inventory control. If we lost fewer members we might have less control over our inventory. We might have more shortages.

Q. This is in the realm of speculation now, isn't it, Mr. Carpenter? That same thing might happen to any of the larger chains, couldn't it?

A. Well, in our speculations, true. But we have to say

more probably it would be the smaller—than it would be the smaller ones.

Q. Don't you have absolute control of your own inventory in your market?

A. To a certain degree only, yes.

Q. Would you explain?

A. Well, in our buying, I mean we would like maybe to have 25 cases or 50 cases of giant size Tide five cents off or ten cents off. This type of merchandise we have never been able to get ahold of because it has already been taken up. Now, in inventory control there has been times that we have had to take merchandise that wasn't off label and so consequently we have had merchandise on hand considerably longer than what we should have had it on hand. I mean in the emphasis of turning merchandise over.

Q. Are you testifying that that doesn't happen to the larger chains, Mr. Carpenter?

A. They can sure as heck—It certainly wouldn't if it is coming direct from the plant itself. If you are running something on the ad they would either see that restitution was made or they are going to get the right merchandise.

Q. How did the merger help Von's in this respect?

A. How would it help them?

Q. How did it?

A. Well, it certainly would have increased their buying power. They merged together their warehousing facilities.

Q. You say it increased their buying power. Isn't it true that once you get to a certain level, buying in carload lots, there is no additional discount for additional quantity?

A. That has been the impression that I have had, yes.

Q. And if it were otherwise wouldn't Orange Empire and Certified Grocers have far greater buying power than Von's or any of the other chains in this area?

A. Well, that is somewhat debatable too, in getting [fol. 116] right back to off merchandise. From what I hear, from the complaints that I have registered with my own co-op in off merchandise, they tell me that they are only allotted a certain amount, which is usually always taken up even by chain members that belong to the co-op. They seem to have their orders in there waiting for it.

Q. Have you investigated the relative merits of Certified Grocers versus Orange Empire in that respect?

A. Not to a major degree, no. I don't know as they—

Q. To what degree?

A. You mean are they out trying to gather up more members?

Q. No. Which one can render better service in that respect to its members?

A. Oh, I think that the service between both of them, I couldn't say that one was any better than the other.

Q. Have you made a study?

A. Yes. I have talked with the people that are with Certified. In fact when I was with the Hiram organization we bought through Certified. So I have some experience with their service that they gave us when I was with them.

Q. On the basis of your study of the industry over the past ten or twelve years would you say that Certified Grocers has grown enormously, both in number of retail members and in volume of business it does?

[fol. 117] A. The growth that they have had in the last couple of years, they have certainly grown all right. In the last couple of years I don't know as to the extent of their growth.

Q. How about Orange Empire?

A. Well, I would say that they have been about the same for the last year.

Q. Do you have any idea what Orange Empire was doing in annual volume in 1950, roughly?

A. Yes. It's considerably more now, Mr. Alsop.

Q. Would you give us the figures, roughly?

A. Roughly over five million more than they were doing then.

Q. Roughly Orange Empire is only five million more a year than—

A. In 1950?

Q. —than in 1950?

A. No, it is much more than that. I don't know the exact figure, though.

Q. Would it be as much as one hundred million more?

A. I don't think so.

Q. Do you have any idea about the relative gross sales of Certified Grocers to its retail members in 1950 as compared to 1952?

A. Certified to its members?

[fol. 118] Q. Yes.

A. How much more now than it was in 1950?

Q. Yes.

A. It is well in the millions, yes.

Q. Many millions?

A. Quite a few.

Q. I gather from your Paragraph 8 that you feel with your quantity discounts you get your dry grocery products on your shelves just as cheaply as any of the direct buying chains; is that correct?

A. No, I don't think so, Mr. Alsup. We can pick up, if we had facilities to pick up, from Del Monte, we could gross another three per cent or one per cent. In taking any direct shipments of large quantities we could make another per cent.

Q. On dry groceries?

A. In the dry groceries, yes. And sugar is the same way, and flour. Staple items you can still, if it isn't shipped to the warehouses, if it is brought direct from the manufacturers or from their warehouse, you can save.

Q. Von's in running a warehouse certainly has some warehousing cost, doesn't it, Mr. Carpenter?

A. I am sure they do, yes.

Q. Do you have any idea if you made any study to determine how the Von's warehousing cost compares to those of [fol. 119] Orange Empire or Certified Grocers?

A. It definitely would be less.

Q. What is the basis for that statement?

A. Well, it wouldn't be very natural for them to operate warehouses unless it was to their advantage, Mr. Alsup.

Q. Here again you are speculating?

A. It is my own thought, yes.

(A short recess was taken.)

Mr. Alsup: Q. Where do you buy your meat, Mr. Carpenter?

A. The bulk of my buying is from E. B. Manning & Son.

Q. That is generally considered a quality house?

A. Yes, it is.

Q. Do you do the buying?

A. No. A brother of mine does the buying.

Q. Has he had prior experience in the meat buying business?

A. Well, he has had the experience since we have been in business, yes.

Q. Have you made any study to determine whether or not you get quality meat comparable to that of any of the chains?

A. Yes, we get quality meat.

Q. Have you made any study to determine whether or not you get your meat at comparable prices on quality? [fol. 120] A. We pay a premium price for Manning's meat.

Q. That is because you choose to buy the premium meats?

A. We buy for the name, yes.

Q. But assuming the chain buying comparable quality, you would get it at the same price as a chain; isn't that right?

A. I hardly think so, Mr. Alsup.

Q. Do you know?

A. Well, I have bought choice meats for half a cent a pound cheaper than I have paid for Manning's. And if I could buy tinned beef I could save myself maybe two cents a pound or maybe a cent and a half a pound. This again is on volume buying.

Q. Does it sometimes happen, or do you know that a single store operator such as yourself can do the packer a favor by picking up a small quantity that a chain couldn't handle and get a better price?

A. If you were able to make the trip yourself and pick it up, yes, you would be saving the packer.

Q. And some of the single store operators do just that, don't they?

A. I don't know of any personally. I mean myself I don't know. There might be, but I don't know.

Q. Who does your produce buying?

[fol. 121] A. We have a fellow, a Mr. Tom Cavalier, he does my produce buying. He has five other accounts besides myself.

Q. I gather from your earlier statement about Mr. Gertmenian you feature higher quality produce; is that correct?

A. We are limited to space so we carry the best, yes.

Q. Do you have any knowledge as to whether you get your produce at comparable prices for comparable quality as any of the chains?

A. We pay a premium price on produce, Mr. Alsup.

Q. Because of the quality?

A. Our produce market—yes. If you buy—I mean if it's quality you will pay a little more for it.

Q. And you believe that featuring quality meat and quality produce attracts customers to your store that might otherwise go elsewhere, don't you?

A. We feel that that's about our only weapon, yes.

Q. You get your milk from Foremost Dairy, don't you?

A. Foremost and Knudsen, yes.

Q. And Knudsen?

A. Yes, we buy Knudsen.

Q. There is a lot of talk in the trade papers about Foremost having given considerable financial assistance to Fox. Did you read that?

A. I believe there was some conflicting deal between [fol. 122] them. I don't know as to what really happened there.

Q. In your opinion does Foremost milk have good public acceptance?

A. Yes.

Q. Is it well advertised?

A. Yes.

Q. Is the same true of Knudsen?

A. Yes.

Q. And is the price at which any grocer can sell milk fixed by state law?

A. Yes.

Q. Would you tell me what competitive advantage that Von's has over you because of its membership in Jersey-maid Milk Company?

A. Well, they certainly have a much better buying power in Jersey-maid in the ice cream division that would come under the dairy category.

Q. Certified Grocers has gone into ice cream, has it not?

A. They were speaking of it. I guess it's in effect now.

Q. Has Orange Empire?

A. Orange Empire, they have their iced milk and they are not going into the ice cream business, no.

Q. Do you believe that Orange Empire would do that [fol. 123] if it felt it would be a competitive advantage for its membership?

A. From what I have gathered in the talks that I have had with them, no, they don't feel that they want to have anything to do with the ice cream division.

Q. Orange Empire once went into the produce business down in San Diego, didn't it?

A. I believe I heard of that.

Q. Do you know whether or not Von's gets a better return on its investment in Jerseymaid than it would get if it had the same money invested in some other business such as common stocks?

A. Well, they certainly have control. I mean as to whether they had their money in stocks and the dividends that they would draw from the stocks, I don't know. They are in the grocery business, so this is the business that they are in.

Q. Is your father in the poultry business?

A. We were in the poultry business, egg ranch, yes.

Q. Did that give you a competitive advantage over the chains and others who didn't have a poultry business?

A. Yes.

Q. Now speaking of Jerseymaid, as you do in Paragraph 8, would you tell me how the merger of Von's and Shopping Bag has changed this situation?

[fol. 124] A. As to this date I can't say that there has been a great deal of change, other than their advertising has merged together. As to what effect this will have on us at a later date is what we are worried about, Mr. Alsop.

Q. This merger has taken place over three years ago.

A. Yes, that's true.

Q. You say to this date you haven't seen any effect; is that correct?

A. Only in my immediate area, yes, against me there has been an effect. There is one or two less businesses.

Q. Do you contribute that to the merger between Von's and Shopping Bag?

A. It is hard what you attribute that to.

Q. That would be the purest kind of conjecture, would it not?

A. I wouldn't say that—

Mr. Coyle: Let him finish his answer.

Mr. Alsop: Q. I'm sorry, I thought you had.

A. It's kind of a funny thing in the grocery industry. We don't knock anybody, we never have. I mean we have a lot of respect for all the people in this business. But we are concerned as to monopoly and what we are facing up

to right now and I do feel like that I have certain advantages that maybe my fellow man hasn't got in his little store, his little business, his 10,000 square foot store. And [fol. 125] as to what is going to come to me later I couldn't put my finger on that, Mr. Alsup.

Q. What are these advantages that you feel that you have in your little store?

A. Labor; that's all. That is the only advantage that I have.

Q. That is you don't employ people who are members of the Retail Clerks Union?

A. We are a family operation.

Q. Do you know what percentage of the cost of operating a business like Von's is made up by its labor costs?

A. Yes, I do.

Q. Will you tell us?

A. I ran my store of Hiram's under union help, I ran it at approximately nine per cent. I feel that probably Von's is still probably running close to that figure, not taking in their office personnel. I am speaking of in-store personnel—management and in-store personnel.

Q. Would you feel that other single store operators have the same advantage over the larger chains that you have insofar as labor cost is concerned?

A. No, they don't.

Q. Why is that?

A. The single store operator, if he is running a service [fol. 126] ice meat department, and he is union, he will run a greater percentage of labor overhead due to the fact of that type of meat operation. If you are offering service to the people over the counter, and what not, you will run a larger overhead of expense.

Q. Do you have any idea how many single store operators there are doing business in Los Angeles and Orange Counties?

A. The number of single store operators?

Q. Yes.

A. No, I don't.

Q. Would you say it was several thousand?

A. Yes.

Q. Do you know how many of those are running their stores with unionized help?

A. Well, speaking truthfully on it I think that probably

maybe certain departments that they run will come under the union help. This doesn't necessarily mean that they are not paying union wages for their help even though they might not be a union store. A good meat man isn't going to work for less wages if he can go some place else and draw a higher wage. I would say that this would be true only if it was a family operation such as I have.

Q. And you don't know how many of these are family operations?

A. Well, there is not a great deal of big families [fol. 127] any more.

Q. Is your answer "No"?

A. That's right.

Q. In Paragraph 8 you say that the major chains, the large chains such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their own warehousing and distribution systems. Were you referring to Orange Empire and Certified Grocers there when you referred to cooperatives?

A. Yes.

Q. Do you know what cooperative Safeway belongs to?

A. Safeway does most of their own warehousing. As to the amount of buying that they might—I know they tried to buy through Certified, which they were denied this some time ago. If that picture has changed I don't know.

Q. You don't know if they belong to any cooperative?

A. I don't think they do.

Q. Do you know if Von's belongs to any cooperative?

A. Von's did belong to Certified.

Q. When?

A. I imagine they still have their membership with Certified.

Q. Here again are you speculating?

A. Yes, I am speculating.

Q. How about Ralphs?

[fol. 128] A. Ralphs has their own buying organization, their own warehousing.

Q. Do they belong to Certified, or do you know?

A. Not to my knowledge.

Q. Or to Orange Empire?

A. Not to my knowledge.

Q. In Paragraph 9 of your statement, Mr. Carpenter, you refer to market share and say you are in agreement with defendant's exhibits showing that in the period 1950 to 1958 the market share of the 8 largest, the 9 largest, the 15 largest and the 20 largest increased. We have marked as Fairbank Exhibit 1 in the earlier deposition here a copy of an exhibit which the witness testified this morning that he saw. I ask you to look at that exhibit and see if that is the one you refer to here.

A. Yes. That seems to appear to be the same.

Q. Is there any reason in Paragraph 9, Mr. Carpenter, why you chose the top 8, 9, 15 and 20 and neglected the top 3, 4 and 5 who are shown on this exhibit?

A. I don't believe I understand your question exactly, Mr. Alsup.

Q. Your Paragraph 9, if you will refer to it, talks about the market share increase in the top 8, top 9, top 15 and the top 20, and you say that you agree that this increase has occurred on the basis of this exhibit which you just testified [fol. 129] was shown to you; right?

A. That's true.

Q. Now, this same exhibit which was shown to you showed what occurred to the market share of the top 5 in that period, didn't it?

A. Yes.

Q. And the top 4?

A. Yes.

Q. And the top 3?

A. Yes.

Q. But that isn't mentioned in your Paragraph 9. Was there any reason why that was omitted?

A. Probably because I don't know just exactly who the top 3 would be here in Southern California right now. I have my own opinion as to who they are.

Q. Did you have any idea when you signed this statement?

A. We knew—We were very well aware, Mr. Alsup, that the percentage of business is going to the larger chains. I mean this can't be denied—

Q. This is not responsive, Mr. Carpenter, to my question. When you signed this statement, which includes Paragraph 9, did you know who the top 20 were?

A. The top 20?

Q. Yes.

A. Yes.

[fol. 130] Q. Do you know who the top 20 are now?

A. In my own opinion, yes.

Q. Would you name them?

A. In the field of the top 20?

Q. Yes.

A. Going right down the line?

Q. Yes.

A. Maybe it would be better if I tried to write it down.

(Discussion off the record.)

The Witness: I believe your question, Mr. Alsup, was in regard to the 20 top chains. Of course, I have come here quite unprepared. I had no idea as to what questions you were going to be asking me.

I can tell you people that naturally my most concern is my surrounding area, which I mean we can give you more, the Los Angeles area is a big place, but we have our Ralphs and our Safeway and A & P and Von's and Shopping Bag, which is one unit, and our Boy's and our Alpha Beta, our Food Fairs, Mayfairs, Food Giant and Hughes Markets, and there is more that do a large volume of business, it's true. Then as far as me giving you any more as to the top 20, I can't.

Mr. Alsup: Q. Do you know whether the top 20 in 1950 were the same companies that were the top 20 in 1960?

[fol. 131] A. I believe I would have to say, yes, they are.

Q. There have been no changes in the top 20?

A. Only in growth and mergers is all.

Q. Was Fox in the top 20 in 1960?

A. Yes.

Q. Was it in existence in 1950?

A. Fox Markets? No.

Q. Was Hughes in the top 20 in 1950?

A. Yes.

Q. Was it in existence in 1950?

A. Yes.

Q. Is that your testimony?

A. 1950 Hughes? No, they weren't. This is going back quite a few years.

Q. Was Shoppers Market in the top 20 in 1950?

A. Yes.

Q. How many stores—

A. No. Shoppers or Shopping Bag?

Q. Shoppers.

A. Shoppers in 1950?

Q. In 1950.

A. Yes. Shoppers, they were in business.

Q. In the top 20?

A. Yes, they were.

Q. How many stores did Shoppers have back in 1950?

[fol. 132] A. I believe in 1950 Shoppers had three or four stores. They were large volume stores.

Q. And that put them in the top 20 chains doing business in the area?

A. Well, I forget what the publication was that the gross volume of business that they were doing. Yes, I believe they would be in the top 20 in 1950.

Q. According to this chart, which you referred to in preparing this Paragraph 9, Mr. Carpenter, what was the share of the top 3 in 1950? You can refer to the chart.

A. We show about 21 per cent.

Q. And what was the share of the top 3 in 1960?

A. About 3 and—The top 3 in 1960?

Mr. Hughes: It doesn't go to 1960, Mr. Alsup.

The Witness: It doesn't go to 1950, it goes to 1958.

Mr. Coyle: '59½

Mr. Vaughan: '59½ has to be 1950.

Mr. Coyle: It is a graph.

Mr. Alsup: Q. That shows the middle of 1960, doesn't it, Mr. Carpenter?

A. Your chart, the top 3 in 1960, about 22 per cent here.

Q. Doesn't that indicate that the share of the top 3 was less in 1960 than it was in 1950?

A. That chart does, yes.

[fol. 133] Q. Doesn't that chart show that the share of the top 4 was virtually the same in 1950 as it was in 1950?

Mr. Hughes: Mr. Alsup, I object on the same grounds that you had to these charts, that they speak for themselves.

Mr. Alsup: Q. You may answer the question.

A. What was the question again, please?

Mr. Alsup: Would you read it, please.

(The reporter read the pending question.)

The Witness: It appears that way here on the chart.

Mr. Alsup: Q. And doesn't that chart show that the share of the top 5 was only slightly more in 1950 than it was in 1950?

Mr. Hughes: The same objection.

The Witness: The chart shows slightly on the top 5 in 1959, it appears on the chart that it was slightly less.

Mr. Alsup: Q. It shows it was somewhat less than it was in 1952, doesn't it?

A. Yes.

Q. And that is true of the top 3 and the top 4 and the top 5, isn't it?

Mr. Hughes: The same objection to all of this. Also, we would like to know what the witness means by "slightly" and "somewhat."

The Witness: Well, merely looking at a chart here that has been drawn up.

[fol. 134] Mr. Alsup: Q. Didn't you rely on this chart, Mr. Carpenter, in referring to market shares of the top 8, 9, 15 and 20 in your Paragraph 9?

A. That is true.

Q. Doesn't this chart show that in 1952 the top 5 had little better than 30 per cent of the market?

A. Little better, yes.

Q. And in 1954 it declined?

A. It did.

Q. And in '55 is declined?

A. True.

Q. It held about even in '56?

Mr. Hughes: The same objection on everything to do with this chart.

Mr. Alsup: Q. You may answer.

A. Yes, it declined in '56 slightly.

Q. And it declined again in '58?

A. True.

Q. It then took a sharp decline in '59 during the period of the strike; isn't that right?

A. Yes. The stores were closed.

Q. And it came back in 1950, but still less than what it was in 1952; isn't that right?

A. That is what it appears here.

Q. Doesn't that chart indicate that the market share [fol. 135] of the top 4 steadily declined from 1952 to 1959?

A. Yes.

Q. And isn't that true also of the top three?

A. Yes.

Q. You relied on this chart in giving an opinion as to the market share of the top 8, 9, 15 and 20. My question to you is: Why was the market share of the top 3, 4 and 5, also depicted on this chart, left out of your statement?

A. I wasn't aware of this 3, 4 and 5, which I am still at a loss as to—I feel that Safeway Stores is one of the top three stores in Southern California and in my own feeling that they have more share of the market than what appears here.

Q. This is again speculation on your part, Mr. Carpenter?

A. That's true.

Q. How about Ralphs?

A. Ralphs? Their percentage of the business I feel is in with the top 3.

Q. Have you felt their market share has declined during this period that I have referred to?

A. In dollar volume, no, I don't think it has declined.

Q. When we talk about market shares we don't just talk about dollar volume, do we, Mr. Carpenter? When you [fol. 136] used your language "market share" in Paragraph 9 you were talking about the percentage of total sales in the entire area enjoyed by a particular concern, were you not?

A. Yes.

Q. So now will you go back and answer my question?

Mr. Hughes: Is the question clear to the witness?

Mr. Coyle: Read the question to him.

(The reporter read the pending question.)

The Witness: No, I don't feel it has declined.

Mr. Alsup: Q. Then you believe this chart is unreliable as to the top 3, 4 and 5 but completely reliable as to the top 8, 9 15 and 20; is that correct?

A. Well, it is my own true opinion, Mr. Alsup, that there has been increases certainly in certain market chains. We know this. I believe that Ralphs did the least expanding, they haven't merged. So it would be rather hard for me to put my own truthful answer as to my own opinion on this.

I feel that we know in the past few years the growth that has been with a few of our, what we call our local Southern chain markets. We know that there has been less expanding, less stores being built in the Ralphs organization. As to the amount of stores that Safeway have instigated, well, I don't know that either.

Q. Wouldn't this be correct, Mr. Carpenter, you don't know of your own knowledge whether the market share of [fol. 137] Safeway has increased or has declined in the period 1952 to 1960?

A. They are pretty close. I mean when they give a figure as to knowing what Safeway does in one certain area, it is rather hard to know. I mean you can get maybe an overall picture of their Western Division, as to the gross dollars that they have done as to their market share, in other words. But we are concerned in the Southern California area, the Los Angeles area.

Q. Do you have any knowledge as to whether or not the increase in gross sales of Safeway has kept pace with the increase in the total grocery sales in this area from 1952 to 1950?

A. I feel that they have kept pace, yes.

Q. And here again you are speculating?

A. Well, speculating, yes.

Q. Would you say you are speculating as to the top 4, the top 5, the top 8, the top 9, the top 15 and the top 20 shown on this chart?

A. Speculating, yes.

Q. Since 1958 Fox has gone into bankruptcy; isn't that right?

A. Yes.

Q. Would you say they were in the top 8 before they got into bankruptcy?

[fol. 138] A. They were doing a large volume of business. Of course, anybody can give it away.

Q. That doesn't answer my question, Mr. Carpenter.

A. If they were in the top 8; is that the question, Mr. Alsop?

Q. Yes. Were they in the top 8 in 1958?

A. Here in the Los Angeles area, yes.

Q. Was McDaniel's in the top 8?

A. Yes.

Q. Was Yor-Way?

A. No, I don't think so.

Q. Were they in the top 9?

A. Yor-Way?

Q. Yes.

A. No.

Q. Were they in the top 15?

A. I would put Yor-Way in the top 20—15-20.

Q. Would you say that the market share of the top 20 has declined since 1958?

A. No, it hasn't. Since 1958?

Q. Yes.

A. According to the chart, yes, it has declined somewhat.

Q. Does that conform to your observations based on your quote continued study of the retail grocery industry [fol. 139] close quote? I am quoting from Paragraph 9.

A. It merely takes into effect on this that there has been a certain amount of stores that have closed their doors and that would represent the dip here that we have, I mean the lessening.

Q. And here again you are speculating?

A. Yes.

Q. You don't know whether that dip might have come about as a result of the decline of market share in Safeway, do you?

A. Well, of course we had a strike here too, Mr. Alsop, in the year '59.

Q. That's right. Our chart goes up to the middle of 1960. Now, I will repeat my question. You don't know whether this decline is attributable to the decline in the market share of Safeway?

A. No.

Q. You don't know whether it is attributable to the combined market share of Von's-Shopping Bag, do you?

A. I feel that it is, yes.

Mr. Alsop: Would you read my question.

(The reporter read the pending question.)

Mr. Alsop: Q. The decline of the top 20 in the market share of Shopping Bag?

A. The decline that we have there, I mean for me to [fol. 140] say that it is because of Von's and Shopping Bag in this top here, the decline that we have had in this year of '59, I would be speculating again.

Q. And if I asked you about the others you would be just speculating, wouldn't you?

A. Naturally. I don't have figures of my own on it, Mr. Alsop.

Q. In Paragraph 10 you state that Shopping Bag was a profitable operation. What was the basis for that statement, Mr. Carpenter?

A. They appear to be successful. I mean from all viewpoints.

Q. And in 1958 did Fox appear to be successful from all viewpoints?

A. Yes, it would appear like that, I guess.

Q. And isn't it true that in '58, '59 and '60 McDaniel's built a lot of new stores and appeared to be a profitable operation?

A. That's true.

Q. So your statement that Shopping Bag was a profitable operation was based on this appearance.

A. Based on the knowledge of an old firm such as Shopping Bag, the number of stores and the experiences that they have had in operating I feel naturally that if I was going to invest I certainly would have invested in Shopping [fol. 141] Bag rather than Fox.

Q. If you were going to invest would you check return on invested capital?

A. Yes, naturally.

Q. Do you have any idea how the Shopping Bag return on invested capital compared with that of Von's?

A. No, I don't.

Q. Or with Ralphs?

A. No.

Q. Or with Safeway?

A. No.

Q. Do you have any idea what their net profit in relation to gross sales was?

A. No, I don't know the exact per cent of net profit.

Q. Can you approximate it?

A. Yes. I would picked Shopping Bag for  $1\frac{3}{4}$  to 2 per cent net profit.

Q. What would you pick Von's for?

A. Approximately the same, maybe a point or two more.

Q. What would you pick Ralphs for?

A. Ralphs a little less.

Q. Is this again speculation?

A. Speculation.

Q. In Paragraph 11 you list Von's and Shopping Bag [fol. 142] along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant as, and you state they were among the leading firms in the area. Are there any others?

A. Yes, there is others.

Q. Which?

A. Well, we have Food Giant now in my immediate area.

Q. In Paragraph 11 you are referring, when you say, "in the area," just to your immediate Alhambra area?

A. Well, no, not necessarily in my own immediate area. I mean these stores happen to be the ones that are closer to me.

Q. And in Paragraph 11 then in referring to "leading firms in the area," you are talking about firms which have stores close to your store in Alhambra?

A. Yes. In the Pasadena and Alhambra area.

Mr. Hughes: I would like the witness to read Paragraph 11.

Mr. Alsup: Q. If after reading this Paragraph 11, which is before you, Mr. Carpenter, you wish to change your testimony, it's perfectly all right.

A. What was my answer to that question?

Mr. Alsup: Would you read him the prior question and answer.

(The reporter read the record as requested.)

[fol. 143] Mr. Alsup: Q. Do you wish to change your testimony?

A. No, they are within the area.

Q. And that is what you meant in Paragraph 11?

A. Yes.

Q. In Paragraph 13 you state that you would testify that you face very vigorous competition from Von's; is that correct?

A. More so from Von's, yes.

Q. Was that true before the merger with Shopping Bag?

A. Well, we had a Shopping Bag closer to us before the merger than we had a Von's.

Q. But was it true that you faced vigorous competition from Von's before the merger? The merger occurred in March of 1960.

A. No, I didn't face as much competition from Von's before the merger. I mean we have had a new unit built since the merger closer to my unit.

Q. Did you face vigorous competition from the Shopping Bag store over on Valley before the merger?

A. It was competition, yes.

Q. Have you noticed any change in the vigor of that competition after the merger?

A. Whether it is due to the merger or not, Mr. Alsup, or due to the newer unit that is closer, I couldn't definitely say. We certainly had a decline from April 15th for the balance [fol. 144] of our year of 1962 compared to our 1961 figures.

Q. But you had a greater gross in '62 than you had in '61, didn't you?

A. Yes.

Q. What I would like you to tell me is whether or not there has been a reduction in the vigor of competition in this area generally as a result of this merger of Von's and Shopping Bag.

A. The competition has gotten rougher, yes, and more vigorous. This is due to mailers that Von's is using in my immediate area plus their own advertising that they had.

Now, I mean with the combination of advertising between Von's and Shopping Bag in our local newspapers and our metropolitan newspapers plus our mailers every once in a while that hit in our immediate area. Now, this is put on by newer units, it takes in maybe only three or four stores on the printing. It will take in just a certain area. Now, whether this would have been done whether they merged or whether they didn't merge, I don't know.

Q. At least you haven't noticed any lessening of competition generally in the Los Angeles metropolitan area since the merger; is that correct?

A. It has gotten tougher, that's all.

Q. In Paragraph 14 you refer to the fact that there have been a number of acquisitions and consolidations in the [fol. 145] retail grocery field since 1948. We know of the Von's-Shopping Bag merger and we know of your acquisition of a store in 1959. What others do you recall?

A. We know that Alpha Beta was taken over by the American Stores.

Q. That acquisition of Alpha Beta by American Stores, when did that occur?

A. This occurred approximately three years ago, I believe.

Q. After the merger of Von's and Shopping Bag?

A. Yes.

Q. And was that the way American Stores entered this market?

A. Yes.

Q. And so far as you know that acquisition has never been challenged by the government; isn't that correct?

A. Whether or not this was a merger, an out-and-out sale, I don't know, Mr. Alsup.

Q. So far as you know it has never been challenged by the government?

A. As far as I know.

Q. What other acquisitions and consolidations do you refer to in Paragraph 14?

A. Well, we have covered most of them with Food Giant taking over some of the old McDaniel's Stores. And [fol. 146] our Fox Markets being taken over by—not the American Stores—

Q. Food Fair?

A. Food Fair.

Q. After they went into bankruptcy?

A. Yes, this was after bankruptcy.

Q. Fox itself, prior to going into bankruptcy, had made a number of acquisitions, had it not?

A. That's true. They had taken over, I believe the Iowa Por Shop Stores.

Q. Wasn't it generally considered in the industry, and based on your knowledge and your reading, that they tried to expand too rapidly with inadequate capital?

A. It appeared that way, yes.

Q. Those were the acquisitions and consolidations you had reference to in Paragraph 14?

A. Yes.

Q. These acquisitions and consolidations that you have referred to, other than the American Stores, Alpha Beta and Von's-shopping Bag, occurred prior to the time you opened your store in 1959, did they not?

A. No. They occurred since we opened. These things have opened since then.

Q. The Food Giant acquisition of McDaniel's occurred after?

[fol. 147] A. After, yes.

Q. And there again it was the purchase of the remaining stores in the McDaniel chain out of bankruptcy; isn't that right?

A. Yes.

Q. There were some acquisitions prior to 1959. You had referred to Lucky acquiring Hiram's, did you not?

A. That's true.

Q. Was that basically the way Lucky entered this market?

A. I don't know if they were in the San Diego division first or not. They entered this market down here, I mean the five Hiram Stores—No. They came in by taking over other stores, yes. The old Jim Dandy Markets.

Q. Prior to 1959 Alpha Beta had acquired the Raisin chain, had it not?

A. That's true.

Q. And way back in 1949 Thriftmart acquired the Roberts markets; do you recall that?

A. No, I don't, Mr. Alsup.

Q. Do you know whether or not it has been the policy of

Thriftmart to sell off its older stores to Thriftmart employees so they can start a business of their own?

A. That might be their policy. I am not too familiar [fol. 148] with their policies.

Q. And you are not familiar with any stores that might have been sold off by Mayfair or Shopping Bag?

A. As far as being sold off, I do happen to know of stores that have been closed up and taken over by other individuals. Whether they were ex-employees—

Q. And usually this affords a former employee of a chain an opportunity to get into business on his own; isn't that right.

A. Yes.

Q. As a matter of fact, from your own knowledge and study of the industry would you say that a larger number of the single store operators are former chain store employees?

A. A great number of them are, yes.

Q. Chains basically furnish the training and background and experience for the single store operators who become their competitors, don't they?

A. Yes, they have worked with the chain markets, yes. I guess you naturally gather some knowledge.

Q. You did, didn't you?

A. Sometimes I don't know. There is a different picture. I thought I did.

Q. In Paragraph 15 you state that this merger of Von's and Shopping Bag quote is a major stride in increasing [fol. 149] the market share of the large chains unquote. How much did this merger increase the market share of Von's?

A. How much it did increase them?

Q. Yes.

A. I don't know.

Q. What did you mean by the "major stride" language used in Paragraph 15?

A. This would be from my own personal thinking that it would be a stride toward other mergers between Market Basket—

Q. You say, "This merger is a major stride in increasing the market share of the large chains . . ." What do you mean by that language?

A. What I meant by this would be a stride toward other mergers.

Q. Later on in this Paragraph 15 you state that specifically. Did you also mean it here?

A. What paragraph are you referring to now, Mr. Alsop?

Q. I am referring to Paragraph 15.

A. Yes, I know.

Q. At the beginning don't you say that there will probably be other mergers?

A. Yes.

Q. And you meant the same thing when you talked about [fol. 150] this major stride?

A. Yes.

Q. In increasing the market share of the large chains.

A. That's true.

Q. And you don't know how much it increased the market share of Von's?

A. The market share, no, I don't know how much.

Q. You do know it didn't increase the market share of Safeway?

A. No, I don't think it did.

Q. Or Ralphs?

A. No.

Q. Or of Thriftmart?

A. No, I wouldn't expect it to.

Q. Or of Food Giant?

A. No.

Q. Actually it could only increase the market share of Von's, couldn't it?

A. Certainly.

Q. Would you please explain what you meant when you said in Paragraph 15 that this merger will quote accentuate the large chains' advantages over the small grocer unquote?

A. In my statement I said if it was permitted, the merger, it could develop into a reaction of other mergers.

Q. When you say that it will accentuate the large chains' [fol. 151] advantages over the small grocer what did you mean by that?

A. In their buying power, that they will be merging together their warehouse facilities, it will definitely give them a better advantage.

Q. Based on your study of the industry, Mr. Carpenter, did this merger between Von's and Shopping Bag increase Von's buying power?

A. It certainly should have.

Q. And that is your opinion based on your study of the industry?

A. It is based on my own speculation, yes.

Q. Isn't it true that Certified advertises that it is the largest retailer owned cooperative buying organizations in the world?

A. They do advertise that fact, yes.

Q. Do you believe it to be true?

A. Yes.

Q. Do you believe that Certified has greater buying power than Food Giant?

A. In one respect, yes, and in another one, no.

Q. Would you please explain?

A. That gets us down to the promotion effects, Mr. Alsup.

Certified Grocers is naturally just a buyer for members. [fol. 152] If some large company wants a big push on a certain product, or something, and Certified Grocers, I mean they do the buying. Naturally they buy for a large number of members. But that doesn't necessarily mean that they can buy lesser amounts than the chain markets, which I don't feel like they can. For instance, as we go to one product, coffee. Coffee, when we buy it out of the grocery book we pay 63 cents a pound. But if we want to buy it on a drop and get an advertising allowance per case, well, naturally we are going to own that coffee cheaper. But still to the co-ops you are going to pay right now 63 cents a pound.

Q. Don't the co-ops make available to its members the advertising allowances?

A. A certain amount, yes. A certain amount of these advertising allowances are available to the members.

Q. What do you mean by a certain amount?

A. Not all of them are—Well, you go into the soap companies. You have to take a drop in order to qualify for this allowance.

Q. You mean a drop shipment from Certified?

A. No. A drop shipment usually right direct from the company itself.

Q. You mean to say that the soap companies won't give Certified the same advertising allowances that they give to [fol. 153] any chain?

A. Well, we haven't been able to collect from P & G. Our warehouse soap purchases, which we—our company was good enough to give us from the IBM, the amounts that we did purchase, but then it's another thing in trying to collect these. On some items the co-ops will collect for us. But in the high volume items and the Proctor & Gamble items, it—

Q. Does Certified have a coffee roasting plant?

A. Certified?

Q. Yes.

A. Yes.

Q. Do you believe that gives the retailers who own Certified and deal with it a competitive advantage over chains which don't have their own coffee roasting plant?

A. It might in certain areas. Some of the members in the over-all picture, store label coffee, or what we call un-advertised labels. As to the real advantage of it, it depends on the area that you are at. We don't carry Certified's coffee or Orange Empire doesn't have their coffee. We just carry national brands.

Q. Certified has a whole line of private label goods, doesn't it, known as "Springfield"?

A. That's true.

Q. And that includes bread?

[fol. 154] A. I believe they do have bread. Of course, not buying from them I know that they did have them.

Q. And various canned goods?

A. Oh, yes, quite a line of Springfield label.

Q. Would you explain to me what you meant in Paragraph 15 about this merger tending to create a monopoly and what you understand a monopoly to be?

A. Well, naturally a monopoly, Mr. Alsup, is always developed from mergers. And it was always my personal belief that two companies such as Von's and Shopping Bag, which I felt were successful operations, and been very successful, I know in my own belief I find it kind of hard to believe that they merged together just to keep their own

heads above water. I can't believe that. I believe in time that they will dominate the market.

Q. That Von's and Shopping Bag will?

A. I couldn't put my full emphasis on Von's and Shopping Bag, no. But this could be a starter of it.

Q. And here again you are speculating in the face of the several thousand other grocers doing business in the area, aren't you?

A. Well, we definitely have to try to look a little ways into the future. I don't know—We would certainly like to remain in business ourselves and I think we will too. But we are going to have to watch some of the developments [fol. 155] that we see are coming. We definitely know of other talks of mergers.

Q. You say in this paragraph that there probably will be subsequent mergers between and involving the other major chains. Are those the major chains which you identify in Paragraph 11?

A. Yes, one of them. Of course, we know that Alpha Beta is with American Stores. We know of Mayfair taking over some of the smaller individual units. We don't know of Safeway or Ralphs ever contemplating any mergers. But there had been some talk in the trade about Market Basket merging, I believe, with the Lucky chain, which was squashed out, I understand.

Q. That was over three years ago and it washed out.

A. Yes.

Q. That was before the merger of Von's-Shopping Bag, wasn't it?

A. I believe it was, yes.

Q. You mentioned Mayfair taking over some smaller units. If I suggested to you that Mayfair has sold more stores in this area in the last ten years than it has acquired, based on your study of the industry would you agree with that statement?

A. I know that they turn them over quite fast, yes.

Q. You don't anticipate that Safeway will engage in a [fol. 156] merger with another major chain in this area?

A. No, I couldn't. I can't see that right now.

Q. And you can't see right now Ralphs merging with another major chain doing business in this area?

A. No. I would hate to think so.

Q. Aside from the Lucky-Market Basket talks, which you testified washed out some time ago, do you anticipate that Market Basket will merge with one of the other major firms in this area?

A. It could be possible, yes.

Q. Would you say remotely possible?

A. No. I——

Q. Would you agree with this, at best it is a possibility?

A. It is a possibility.

Q. At best?

A. At best.

Q. And that would be true also of Thriftimart?

A. I don't think so of Thriftimart right now, no.

Q. You don't anticipate that?

A. No.

Q. And Alpha Beta?

A. Well, we know that they've got a lot of strong backing behind them now, so they are building. I don't anticipate them merging, no.

[fol. 157] Q. Mayfair?

A. There we go again on Mayfair. They turn them pretty fast.

Q. You don't anticipate that Mayfair will engage in a merger with another major chain in this area, do you?

A. Maybe not right in the area. It could get pretty close maybe.

Q. We are talking about Los Angeles and Orange Counties in this case.

A. No, I don't anticipate that right away.

Q. And how about Food Giant?

A. It could be there, yes.

Q. You say that it could be. Is this another mere possibility?

A. I feel on my own thoughts and speculation that there definitely could be a merger between Food Giant, yes.

Q. And who? None of these others you have mentioned in Paragraph 11; is that right?

A. No, they wouldn't merge with those in Paragraph 11.

Q. That brings us down to the only one remaining in

your Paragraph 11, and that is Von's-Shopping Bag. Do you expect them to engage in another merger?

A. I hope not.

Q. That doesn't answer my question.

[fol. 158] A. Well, I don't have my little crystal ball, Mr. Alsup. I can't answer that.

Q. Did you have it when you wrote Paragraph 15, Mr. Carpenter? The crystal ball, I mean.

A. It was merely my statement, my own truthful statement, Mr. Alsup, as to the danger that we more or less see ahead.

Q. And yet when we asked you about people you say you don't anticipate, or at best it's a mere possibility and speculation in your mind; isn't that right?

A. Well, we speculate and we see a lot of these things happen. We hear a lot of talk in the trade and it's pretty hard to give answers more so than just our own speculation, certainly.

Q. You said before you expect to remain in business, and having seen your store, Mr. Carpenter, I would expect that too. It's a neat, clean, well-run store. I congratulate you upon your store.

I have no more questions.

#### Cross-examination.

By Mr. Hughes:

Q. Mr. Carpenter, you stated that when you went into business at your present location you put in 18 to 20,000 cash yourself. You mentioned you borrowed more money.

A. Yes.

[fol. 159] Q. Where did you borrow this money from?

A. This collateral was put up with our co-op who obtained the loan for me.

Q. Orange Empire?

A. Yes.

Q. Are they usually in that business?

A. No, they are not.

Q. How much of a loan did you get?

A. We obtained \$30,000.

Q. You mentioned in your examination by Mr. Alsup

that there was a Safeway Store across the street from Mr. Gertmenian.

A. Yes.

Q. Is that a new Safeway Store?

A. No, it isn't what we would consider new. It opened probably in '58, the first part of '58.

Q. Is that before or after Mr. Gertmenian moved in?

A. No. It was built—Gertmenian came in after Safeway was there. The old Commonwealth Market had been there for I don't know how many years.

Q. You mentioned your competition and you mentioned a number of stores in your area in your answers to Mr. Alsup's questioning. How do you go about establishing your prices with that competition?

A. We take what is considered the Key service or the [fol. 160] Black Book, which is done by a company making surveys of all the chains and their pricing methods, and we take a subscription to that magazine.

Q. What do you follow in that magazine?

A. We follow Ralphs and Von's.

Q. Do you follow Gertmenians' prices?

A. He has no prices.

Q. Do you follow Star Market's prices?

A. No.

Q. Or Rite-By?

A. No.

Q. Do you follow any other independents?

A. No.

Mr. Alsup: You don't refer to Mr. Irvine as an independent. He is a chain.

Mr. Hughes: Q. You stated in answer to a question from Mr. Alsup that you do your advertising in the Alhambra Free Press.

A. Yes.

Q. Have you noticed what other retail grocery stores advertise in the Alhambra Free Press?

A. Yes.

Q. Could you give us their names?

A. Von's advertise in it and Shoppers advertise in it and Gertmenian advertises in it, and a few small meat [fol. 161] markets.

Q. Does Unimart advertise in it?

A. They were in it for the grand opening, just only one time that I know of.

Q. When was the opening of Unimart?

A. It was the 15th of last month, March 15th.

Q. Did you observe these advertisements in the Alhambra Free Press for the chains?

A. Yes.

Q. Do you also observe these advertisements for the chains in the metropolitan newspapers?

A. Yes.

Q. Do they run the same prices in the metropolitan newspapers?

A. In the Free Press and the metropolitan papers, yes, but not in their mailers.

Q. Whose mailers are these now?

A. What?

Q. Whose mailers are you referring to?

A. Mailers that has been sent out by Von's-Shopping Bag.

Q. In what respect is their advertising different?

A. Several times there is different items in the mailer and on a couple of occasions we have noticed different—just the different items but at a rather hot price, as [fol. 162] we say in the grocery trade.

Q. Generally speaking, on the chain prices, they are the same throughout the Los Angeles area?

A. Yes, they are generally the same.

Mr. Alsup: Just a moment. I would like to move to strike the answer so I can make an objection to the question.

Are you referring to any particular chains?

Mr. Hughes: I am referring to the chains as a group.

Mr. Alsup: The chains as a group have identical prices, was that your question?

Mr. Hughes: I will strike the question if that is the way it appeared.

Would you read my question back.

(The reporter read the pending question.)

Mr. Alsup: I object to the question on the ground that it is ambiguous and calls for a conclusion.

Mr. Hughes: Q. When you read the Von's ad in the Alhambra Free Press and the Von's ad in the Los Angeles Times do they normally have similar prices?

A. Yes, yes. In the Free Press and the metropolitan papers, yes.

Q. You have mentioned that in answer to Mr. Alsup's questions that some McDaniel's Stores were sold to independents. Do you know if any McDaniel's Stores were sold off to chains?

[fol. 163] A. Yes.

Q. Which chains bought those stores?

A. Food Giant had taken some of the McDaniel's Stores, I believe.

Q. Any other chain?

A. I don't know on the McDaniel's Stores. There was one or two other stores that was taken up. I don't know who they were taken up by.

Q. You have stated that when you put in your orders with Orange Empire very often there are a lot of outs. What do you mean by this statement?

A. Well, not receiving merchandise. Either the merchandise wasn't available on the co-op's floor or it was taken up before my order reached them.

Q. How would you obtain this merchandise if you couldn't get it through Orange Empire?

A. I would have to wait until the next week and try again.

Q. Do you believe the chain stores would have the same problem?

Mr. Alsup: I object to the form of the question on the ground that it calls for a conclusion and no foundation has been laid.

Mr. Hughes: Q. Answer the question.

A. I hardly think so.

[fol. 164] Q. When you were with Hiram's Market did you have any experience in buying meat?

A. Not in buying meat, no.

Q. In buying produce?

A. No.

Q. You stated that you bought your produce at your present store through. I believe it is, a broker.

A. We buy at the Los Angeles Market here, yes.

Q. What is the name of the man you buy through?

A. My buyer is Tom Cavalier.

Q. Does Mr. Cavalier receive a brokerage fee from you?

A. I pay him for hauling, yes, a percentage.

Q. Do you know if Von's buys through brokerage houses in their produce buying?

A. They buy some, yes.

Q. Would you know if they buy any produce direct?

A. Yes.

Q. Mr. Alsop has questioned you regarding particular mergers which you believe might occur in the future. Have you any way of knowing the internal operations of any of the major chains which are mentioned, for instance, in Paragraph 11?

A. No, I have no absolute way of knowing.

Q. Did you know in advance of the Von's-Shopping Bag [fol. 165] merger, that they were going to merge?

A. No. Just merely talk. I mean through the trades that there had been talk.

Q. But you didn't anticipate that particular merger?

A. No, I did not.

Q. And you do not anticipate any particular mergers today?

A. No.

Q. You stated that you talked to Mr. Alsop on the telephone at one time?

A. Briefly, yes.

Q. Did he ask you to read an article on discount houses in the Commercial Bulletin?

A. I believe he did mention an article.

Q. Have you read that article?

A. No.

Q. Do any of the chains belong to your cooperative, Orange Empire?

A. Yes.

Q. Which ones are those?

A. Well, we have Stater Bros. and the Pantry Markets and most of the other stores are just individuals. None of the large chains that I know of. Shoppers did buy from Orange Empire but I don't know what their extent of buying is now.

[fol. 166] Q. Do you know if any of the large chains belong to Certified Grocers?

A. Yes.

Q. Which ones are these now?

A. Well, the Lucky Stores did belong to Certified and the Shopping Bag Stores belonged to Certified, Food Giant Markets. But as to what has been happening with Certified and them as to here lately, I don't know because I belong to Orange Empire. I stress most of my thoughts to them.

Q. If a chain belongs to Certified and should have its own warehousing doesn't it have a choice of the advantage available in each facility?

Mr. Alsop: I object to the form of the question on the ground that it calls for a conclusion, it is argumentative and no foundation has been laid.

Mr. Hughes: Q. Will you answer the question?

A. Yes, they certainly have advantages.

Mr. Coyle: Read the question and the answer.

(The reporter read the record as requested.)

Mr. Hughes: Q. In that chart before you, which is identified as Fairbank Exhibit 1, does it show the top 4 going up in 1960?

A. Yes. In 1959 and wavering toward 1960, yes.

Q. To what did you attribute that drop in 1959?

[fol. 167] A. To the strike, the Retail Clerks' strike.

Q. Have you got before you this statement identified as testimony of Artie L. Carpenter?

A. Yes, sir.

Q. Is this the statement to which we have been referring during the course of this entire interrogation?

A. It is.

Mr. Hughes: I would like to have identified for the record, please, as Carpenter No. 1 the statement just referred to.

(The document referred to was marked by the notary public as Carpenter Exhibit No. 1 for identification, a photostatic copy of which is attached here.)

Mr. Hughes: That is all.

## Redirect examination.

By Mr. Alsup:

Q. You were asked, Mr. Carpenter, if any of the chains were members of Certified and you mentioned Lucky and Food Giant, I believe. Is Market Basket a member of Certified?

A. Yes.

Q. Is Food Giant a member of Certified? I think you mentioned that.

[fol. 168] A. Yes.

Q. Is Mr. Hughes chairman of the Board of Certified?

A. Yes.

Q. Is Alexander's a member of Certified?

A. Yes.

Q. Is Thriftmart a member of Certified?

A. Yes.

Q. You said that these companies which are members of Certified and also have their own warehouse have definite advantages. Would you say they have definite advantages over a concern like Safeway which is not a member of Certified?

A. As to the advantages that they would have over Safeway, I think that most of us look at Safeway, which has a lot of their own brand items. I feel that they have just the same qualifications for the Southern Division here as the Safeway Stores have. Yes, I think so.

Q. Would you say they have an advantage over Von's, which has its own warehouse but does not belong to Certified?

A. I don't know as they would have too large of an advantage, no.

Q. Do you know how much Von's has invested in its warehouse?

A. Quite a few dollars, I imagine, yes.

Q. Do you know what taxes they pay on it?

A. Considerable amount.

[fol. 169] Q. Do you know whether it is actually more costly or less costly for them to warehouse than to belong to Certified?

A. I would have to feel that it would be less costly for them maybe in the long run of the picture as to—We do

know that Shopping Bag had their own warehousing facilities and deli facilities when they merged together and the new warehousing that maybe Von's "installed." Probably there is an expense there, true enough.

Q. Didn't you testify earlier that Safeway tried to get into Certified and couldn't?

A. That is what I have heard, yes.

Q. You said that I mentioned in the telephone conversation with you an article on discount houses in the Commercial Bulletin. Actually wasn't the only conversation we had about discount houses the coming opening of the Unimart near you?

A. There was the mentioning of the discount houses. I can't just exactly remember what was our conversation, which was short because I was busy, Mr. Alsup.

Q. And I called you to see if I could have an interview with you; isn't that right?

A. That's true.

Q. You said you preferred to talk to me in the presence of the government attorneys; isn't that right?  
[fol. 170] A. That's true.

Q. And you would get in touch with them and call me back; is that true?

A. That's right.

Q. And you did not call me back?

A. I did not.

Q. You said that you didn't know in advance of the Von's-Shopping Bag proposal to merge. You read the Commercial Bulletin and the trade papers religiously, don't you?

A. I try to. It is pretty hard to make all the coverage on it.

Q. This merger took place the end of March 1960. Weren't there publications about a proposal to merge as early as October and November of 1959?

A. In the Commercial Bulletin?

Q. I don't know. Do you read the Wall Street Journal?

A. No. My father takes the Wall Street Journal and I glance through it but I don't read it very much.

Q. When did you first learn of the proposal of Von's and Shopping Bag to merge?

A. Well, when it happened it naturally was all over the trade. I mean everyone knew about it.

Q. And that is about when you first learned it, in March of 1960?

[fol. 171] A. Yes, it was around that particular time.

Q. Would it surprise you to know, Mr. Carpenter, that despite all your reading and knowledge of the industry the government somehow learned about it back in 1959 and we furnished information to them about our plans to merge?

A. Well, I didn't know about it then.

Mr. Coyle: Mr. Alsup, why don't we get the record clear and ask this witness if he is referring to the actual acquisition or the announcement of the acquisition which took place some time prior to the actual acquisition?

Mr. Alsup: Q. When did you first know about the proposal to merge, Mr. Carpenter?

A. It was in '59.

Q. So if you testified earlier differently you want to correct that now; is that correct?

Mr. Coyle: I really think the witness' testimony is correct, that he heard about this announcement in the trade.

Mr. Alsup: He can answer this then.

The Witness: Gentlemen, I am just trying to figure it out. I opened in March—I mean in May of '59 and I believe that I was either informed of it or I read it, it is pretty hard to put a finger on three years ago, as to whether it was talking about it or whether I read about it.

Mr. Alsup: Q. Surely.

[fol. 172] A. Well, naturally I knew about it but I think it was in the latter part—the last part of '59 that I heard about the Von's and Shopping Bag merger.

Q. You testified that Orange Empire put up a loan of \$30,000 to help you acquire your store?

A. They merely, to clarify, got the parties to go along with the securities that I had to offer them, which was properties which they take a first trust deed on.

Q. I think you said this is not a service that Orange Empire renders to any of its members. Why were you selected?

A. Because I had the collateral. A lot of people will approach co-ops, I mean to get maybe a loan, but unless

they have something you don't just reach out and find somebody that will loan you money on property, or at least enough.

Q. That is true of banks too, isn't it, Mr. Carpenter?

A. That is true.

Q. But if a man has collateral and wants to acquire a second store and is a member of Orange Empire will they give him this assistance?

A. They have certain contacts with people, I mean that are willing to loan money if there is collateral put up for them.

Q. And they have to have confidence in the grocer and his ability to run a good operation; isn't that right?

[fol. 173] A. Well, I imagine that they wouldn't ask the people to loan money unless they felt like they could pay it back, I mean meet their obligations.

Q. Would you say this is one of your advantages of belonging to the Orange Empire Co-op?

A. Well, it's an advantage. All right, yes.

Mr. Alsup: I think Mr. Bates has a few questions.

By Mr. Bates:

Q. Mr. Carpenter, I believe you testified that if a chain belongs to Certified and would also own its own warehouse it has a choice of advantages. Did you refer to advantages over an independent operation?

A. Yes, I was referring to that.

Q. What advantages does a chain who owns its own warehouse have in buying from Certified?

A. Warehousing themselves rather than taking it off the floor of Certified.

Q. What are the advantages of buying from Certified? What advantages does the chain have in buying from Certified?

A. Well, they don't have to carry the variety in their own warehouse. This is the advantage of them belonging to a co-op such as Certified Grocers. Maybe in their own warehouse they are only shooting at the volume staple items, which is a very low gross mark-up merchandise, and the other variety parts, I mean which would not pay them to carry themselves they draw from Certified.

[fol. 174] Q. Does not the independent who buys from Certified have the same advantages in that respect that the chain has who buys from Certified?

A. Maybe some of them might have that same advantage.

Q. Are not all of the members of Certified treated in an impartial manner when it comes to purchasing?

A. Very true. As far as the treatment I don't think there is any partiality shown, no.

Q. Have you related all of the advantages that a chain may have in buying from Certified?

A. Yes.

Q. Just the one that you have related to us.

A. Yes.

Q. What different advantages over an independent does a chain have in owning its own warehouse?

A. Well, their advantages would definitely be to merchandise that maybe would be carrying a promotional allowance for just a certain length of time and they needed to warehouse that particular item, going on maybe their own good judgment of purchasing that item knowing that within two weeks or thirty days that item will have an increase in price. So if they can warehouse it, well, naturally I mean it's to their advantage.

Q. A chain who owns and operates a warehouse—Let us take the Von's-Shopping Bag warehouse. Do you know [fol. 175] that warehouse?

A. I have been by the one. I haven't gone through it, no.

Q. You know of your own knowledge, as a businessman experienced in the grocery business, that it's costly to operate a warehouse of that kind, is it not?

A. Yes, it must be.

Q. An independent who does not have a warehouse does not have to bear that cost, does he?

A. No, he does not have that overhead.

Q. That cost, the cost of warehousing, is borne by Certified in respect to an independent who belongs to the organization; is that true?

A. Yes, that's true.

Q. So the cost of warehousing is also borne by Certified in cases where a chain is a member of Certified; is that not true?

A. That's true.

Q. So do you think the extra cost of maintaining their own warehouse is an advantage to the chain over an independent?

A. I truly do, yes.

Mr. Bates: I think that is all.

By Mr. Alsup:

Q. What was the basis for this conclusion that you just expressed?

[fol. 176] Mr. Coyle: I think that Mr. Bates established the basis when he asked the question originally. On the basis of his experience as a businessman operating in this field.

Mr. Alsup: Q. Would you accept Mr. Coyle's statement as your testimony, Mr. Carpenter?

A. You go ahead and phrase your question again, Mr. Alsup, and I will try to answer your question.

Mr. Alsup: Would you read Mr. Bates' last question and the answer to it.

(The reporter read the question and answer as follows:

"Q. So do you think the extra cost of maintaining their own warehouse is an advantage to the chain over an independent?

"A. I truly do, yes.")

Mr. Coyle: Now would you read Mr. Bates' first question to the witness.

(The reporter read the question and answer as follows:

"Q. You know of your own knowledge, as a businessman experienced in the grocery business, that it's costly to operate a warehouse of that kind, is it not?

"A. Yes, it must be.")

Mr. Alsup: Q. That question is the basis of what is [fol. 177] your conclusion when you said you truly do

believe there is an advantage in owning their own warehouse. What is the basis for that conclusion?

A. I believe that the answer is also above there the same as I stated to this gentleman. That within our own chain markets we are trying to get as to why we have a warehouse and why the advantages that we have them. We have our own grocery buyers—we have grocery buyers in our Certified Grocers. So I stated merely that items that were promotions that are only going to be effective a certain length of time the chain markets can take advantage of these special prices which sometimes amount to a dollar a case or a dollar and a half a case, and lay in a 30- or 45-day supply.

I think most usually they don't wish to lay in more than a 30- or 60-day supply. It depends on the item.

They have knowledge from their own experience as to whether an item might decline in price or it is going to effectively go up in price. These advantages they certainly are going to take care of. They are going to watch for these advantages. That is why they have their warehouses.

Q. Doesn't Certified have that knowledge?

A. Certified must have a larger turn-over in their warehousing, Mr. Alsup, than our chain markets do. Naturally they are going to buy and they publish papers to the trade as to this deal. But the smaller operation, I mean he can [fol. 178] take what he can on it and that's it.

Q. And with the larger turn-over, more rapid turn-over, Certified warehousing costs are less, would you say?

A. I don't really think that Certified's warehousing would run less, no.

Q. Do you know?

A. From my own speculation I would say that it doesn't. That the chain markets can operate their warehouses just as cheaply as Certified can operate theirs. We have some pretty highly paid executives in Certified and we have people out in the field. So I don't know as to how I could say really which one is operating more efficiently. But chain markets will give them a good run for their money.

Q. I won't ask you to speculate any more, Mr. Carpenter.

A. Fine.

Mr. Alsup: Shall we stipulate that the deposition can be filed without signature?

Mr. Coyle: That is a good idea.

Mr. Alsup: Mr. Carpenter, is it agreeable to you, if it is agreeable to the attorneys for the government and us, that your deposition be filed with the court without being read or signed by you?

The Witness: Yes, it's all right with me.

[fol. 179] Mr. Alsup: It is so stipulated?

Mr. Coyle: We so stipulate.

[fol. 180] TESTIMONY OF KASPER CHITJEAN

If subpoenaed to testify, Kasper Chitjean would testify as follows:

1. He is the owner and operator of Kasper's Market, 3980 East Olympic Boulevard, Los Angeles, Los Angeles County, California. He has operated Kasper's Market at this address since 1927 and he has been active in the grocery business for the past 42 years. The gross sales of Kasper's Market in 1959 were about \$150,000.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Chitjean closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the "Black Book," a booklet similar to the Key Services, and follows the prices of all of the major chains appearing in these booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Retail Grocery Journal", "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

3. on the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, [fol. 181] the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits

prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

[fol. 182] 6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at these warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchased from Spartan Cooperative (a subsidiary of Certified Cooperative) and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major perishable products as fresh dairy, meat, and produce items. However, he would testify that large

chains, such as Von's and Shopping Bag, belong to co-operatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of the cooperative with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping Bag, belong to a dairy co-[fol.183] operative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the picture presented in the defendants' exhibits which show that in the period between 1950 and 1958 the market share of the eight largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the nine largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the fifteen largest chains increased from 38.4 per cent to 50 per cent; and the market share of the twenty largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operation of Von's Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mavfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have oper-

ated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for new locations is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same line and the stores are known as "Von's and Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field [fol. 185] since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

[fol. 186] DEPOSITION OF KASPER CHITJIAN, taken on behalf of defendants, at 433 South Spring Street, Los Angeles, California, commencing at 9:30 A.M., Tuesday, April 16, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

KASPER CHITJIAN, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Alsup:

Q. Mr. Chitjian, would you state your name and address for the record, please.

A. Kasper Chitjian, 1247 South Ditman.

Q. Los Angeles?

A. Los Angeles 23.

Q. Where is the address of your business?

A. 3980 East Olympic Boulevard, Los Angeles 23.

Q. We have been furnished, Mr. Chitjian, with a copy of what purports to be your testimony if you were subpoenaed to testify. Do you have a copy of that before you?

A. Yes, I have.

Q. Have you read it over carefully?

A. Yes

Q. This statement says that you are the owner and operator of Kasper's Market at 3980 East Olympic Boulevard. That is correct, isn't it?

A. That's correct.

Q. You have operated Kasper's Market at this address since 1927; is that correct?

A. Yes. The first time it was known as East 9th Street Market and when it was changed to Olympic Boulevard I put it "Kasper's."

Q. When was that?

A. Oh, ten-twelve years ago.

Q. You changed the name to Kasper's Market but don't you still have a sign on the building that says—

A. It says "Kasper's East 9th Street Market."

Q. This statement says you have been in the grocery business for the past 42 years. Where were you in the grocery business prior to 1927?

A. 6th and Indiana, 6th and Euclid, L.A.

Q. This statement says that your gross sales in 1959 were about \$150,000. Can you tell us what the gross sales were in 1962?

A. Just about the same.

Q. Weren't they a little bit more?

A. No.

Q. You haven't said that they were in the neighborhood of \$170,000?

A. No.

[fol. 188] Q. How large is your market, Mr. Chitjian?

A. It is 75 by 40.

Q. That is 3000 square feet?

A. I don't know. Whatever that is.

Q. Is all of this 3000 square feet devoted to grocery sales?

A. Groceries, vegetable and meat.

Q. What was your investment when you purchased this market?

A. I built it.

Q. Did you own the land?

A. Yes.

Q. What was your cost of building?

A. Of course, 1927 cost more ground, about \$10,000.

Q. What was your cost of the land?

A. Land cost me about \$6,000.

Q. Can you give us some idea of the present net worth of your market?

A. You mean building?

Q. Building and the land.

A. Well, I don't know because I have three tenants with it. So whole building run to about 80 by 130. And I haven't have any appraiser but I imagine it cost about \$50,000 or \$60,000.

Q. Do you have any idea of your own personal present net worth?

[fol. 189] A. No, I wouldn't know. I imagine about hundred.

Q. Does your son work in the business with you?

A. Yes.

Q. How long has he worked with you?

A. Since 1958 when he got out of Service.

Q. Do you own any stock in any other grocery company?

A. Yes.

Q. What company is that?

A. Thriftimart.

Q. How many shares of Thriftimart do you own?

A. I think it's a little over 600.

Q. When did you acquire the stock in Thriftimart?

A. Well, it was in 1936 when it was Smart & Final, and salesman come along and I never knew anything about the stock market, but he told me, "Kasper," he said, "if you want to make some money you buy Smart & Final stock."

At that time that was closed corporation, or close company and he says, "The owner or big stockholder has passed away and they are selling." So I bought that time around 50 shares. I think it cost about \$18 a share. That is how it happened from there on they just keep on giving me dividend shares and came to that much. From Smart & Final naturally change to Haas Baruch & Company, from Haas Baruch to Thriftimart.

Q. In the grocery business is a store like yours of [fol. 190] 3,000 square feet know generally as a mom and pop store?

A. Now, not used to be. Now known as momma-poppa store.

Q. I suppose back in 1927 that was about the size most of the grocery stores were in this area; isn't that right?

A. No. Mine was biggest one then.

Q. 3,000 square feet There have been changes in the grocery business just like in the blacksmith business since then; isn't that right?

A. That's what I think.

Q. I suppose in that time you were still getting deliveries by horse and buggy on occasion.

A. No, there was no horse and buggy yet. They have automobile. I never have seen horse and buggy in the United States.

Q. Have you remodeled and repainted your building since you built it in 1927?

A. Oh, yes.

Q. When was the last time, Mr. Chitjian?

A. I paint building around about six years ago.

Q. How about the fixtures inside, are they modern?

A. Well, if you comparing with some of the big market, no. But it's modern in the sense of momma-poppa stores.

Q. How much parking space do you have for your [fol. 191] customers?

A. I have around about 15 cars.

Q. Is that behind your store?

A. Right back of it.

Q. Your store fronts on Olympic Boulevard?

A. Correct..

Q. Has there been any change in the character of the neighborhood in that area since 1927?

A. Oh, yes.

Q. Would you describe it, please?

A. Well, the freeway is over there and street has been paved.

Q. Has the area become more industrial?

A. Not on my street. It is on Union Pacific town, south of Union Pacific, but not on Olympic.

Q. What do you regard as your trading area, the area from which you draw the majority of your customers?

A. Well, of course I have it from all over because I have been there for so long and they come from different places. But still that started about six-seven blocks area.

Q. How far is this Santa Ana Freeway to the north of your store?

A. Half a block.

Q. Did that cut off access to your store to some of your customers?

[fol. 192] A. That's right. By walking.

Q. In your observations of the grocery business, Mr. Chitjian, over this 42-year period, have you observed freeways putting a number of grocery stores out of business?

A. If there was freeway.

Q. There has been quite a good deal of freeway construction in recent years?

A. That's right. Not only grocery business, any other business.

Q. So you have the Santa Ana Freeway to the north. To the south of you we have an industrial area, do we not?

A. Yes.

Q. What is the big plant?

A. Zellerbach.

Q. Crown Zellerbach?

A. Crown Zellerbach.

Q. What grocery stores are there to the east of your store?

A. Safeway is closest.

Q. I beg your pardon?

A. There is two small stores and then there is a Safeway.

Q. What are the two small stores?

A. Well, I don't recall their exact name of it but [fol. 193] it is small stores over there.

Q. Small mom and pop's?

A. Well, you have just to take pop and leave the momma there in comparing it.

Q. How far away from you is the Safeway Store?

A. About five-six blocks.

Q. When was that built?

A. I think it was around about 1950 something. I just couldn't recall it.

Q. Then going beyond Safeway, further east what is the next store?

A. Well, there is one store around Telegraph and Olympic they call Simon's Market, and then you have to just keep on going until you go to Atlantic Boulevard.

Q. What store is there on Atlantic?

A. Well, there is shopping center Atlantic and 6th Street, or Beverly Boulevard.

Q. What grocery concern has a grocery store in that shopping center?

A. They have almost all the major markets in there like Food Giant, A & P, Safeway, Von's.

Q. How far would you say that shopping center is from your store?

A. About three miles.

Q. Is that the closest Von's Store to you on the east?  
[fol. 194] A. Yes. That one and then there is one Shopping Bag over in Montebello, right by the park.

Q. How far away from you is that Shopping Bag Store?

A. About four miles.

Q. The shopping center you refer to, the closest store to you would be the Safeway, wouldn't it?

A. No. Safeway is not in shopping center.

Q. Isn't there a Safeway at Atlantic Boulevard?

A. There is one over there but there is another Safeway on Atlantic Boulevard.

Q. Is there an A & P in this area too?

A. In the shopping center, yes.

Q. Going to the south of your store on Olympic Boulevard, Mr. Chitjian, what markets are there?

A. There is three or four small markets.

Q. Do you know the names of them?

A. Well, there is one block south, Union Pacific, and east of that there is John's Market, and there is J.B. Market, Mandel's Market there is four or five blocks away from me.

Q. How far away from you is this Value Ranch Market?

A. Three blocks. That is west of me.

Q. I am sorry, I said going south and I meant going west. You so understood me?

A. You said south and I answer south. And then when [fol. 195] you said west then I went west.

Q. I apologize. Let us go west now. Going west, Mr. Chitjian, from your store what is the nearest grocery market?

A. Value Ranch.

Q. Is that the market that is run by Mr. Swerdlick?

A. No. I think it is Silvers.

Q. Do you know a Mr. Swerdlick?

A. No.

Q. Have you been in this Value Ranch Market?

A. I have been there once.

Q. What is your impression of that market?

A. Same as mine, only a little bigger.

Q. Do you think it is a well-operated market?

A. It was before the chain stores start in in there. Now it turn to be a momma-poppa store.

Q. When was that?

A. He is building there, I think he build over there about 1940.

Q. Across the street from that Value Ranch Market there is a milk depot, isn't there?

A. That's right.

Q. Are the milk depots permitted to sell their milk at a lesser price than the grocers can sell it?

A. I don't know.

[fol. 196] Q. Do you regard this milk depot as any competition to you?

A. No.

Q. Going further west beyond the Value Ranch what is the next store that is nearest to you?

A. There is a momma store over there corner 8th—between 8th and 9th—8th and Olympic small store over there, and there is bigger store that we have over there is Fine's Market on Olympic Boulevard.

Q. That is on Olympic Boulevard?

A. By Sears and Roebuck.

Q. Soto, is that?

A. Boyle Avenue, Soto, yes.

Q. How far away from your store is Fine's Market?

A. Two and a half miles.

Q. Going further west, Mr. Chitjian, what is the next market?

A. We don't have any more. You have to come downtown.

Q. What Von's and Shopping Bag Stores do you compete with?

A. Just one on shopping center on Beverly, or Pomona and Atlantic, and the other one is the Shopping Bag over there in Montebello.

Q. One you said was three miles away and one four [fol. 197] miles away.

A. That's right.

Q. In this long period of time that you have been in the grocery business, Mr. Chitjian, you have studied the industry?

A. A little.

Q. You read the trade papers?

A. Some.

Q. Have you observed how Von's got started in 1930?

A. I read sometimes.

Q. Did they get started with a one store operation after you got started?

A. Yes, sir.

Q. And they were able to grow and build a chain; isn't that right?

A. That's right.

Q. Did you notice the same thing about Shopping Bag, how it got started after you did?

A. That's right.

Q. And they grew and built a chain; is that right?

A. That's right.

Q. How about Market Basket?

A. Same.

Q. And how about Thriftmart?

A. Same.

[fol. 198] Q. Have you made any effort during this period, Mr. Chitjian, to build a chain?

A. Not to build a chain, very little bigger market.

Q. You preferred to have a single store operation; is that it?

A. That's right.

Q. You have run your market successfully since 1927; isn't that right?

A. I hope.

Q. In Paragraph 3 of your statement, Mr. Chitjian, you say that on the basis of your continued study of retail grocery merchandising in the Los Angeles metropolitan area, in the period since 1950 the number of single store grocery retailers operating in the area declined. What area have you studied?

A. Well, my area and then read in the papers the other areas.

Q. Have you made any study of Orange County?

A. No.

Q. Have you made any study of all of Los Angeles County?

A. Well, just whatever—Sometimes when I read the papers and see where this and that has closed up.

Q. Has this decline that you observed, primarily in your area I take it, been mostly the small mom and pop stores?

[fol. 199] A. Yes.

Q. In your experience have you found that sometimes the children in the family, when the parents no longer want to run the store, prefer to get into some other line of business?

A. Yes.

Q. You also say in Paragraph 2 that in order to continue in business a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. What marketing changes have you observed in recent years?

A. Well, like we have to have more frozen food, delicatessen, bring better fixtures in there and we have to compete the price whatever the chains are selling.

Q. This is what the public demands?

A. That is what the public demands.

Q. Have you noticed discount stores operating supermarkets opening up in the area in recent years?

A. No, not grocery stores. Discount houses more or less appliance or hardware or tires, or something like that.

Q. You are not aware of any discount houses in the area which sell groceries?

A. No, not altogether grocery.

Q. Grocery along with other products?

A. They might have like White Front, about four miles [fol. 200] away from me, they might sell tuna or have a special on orange juice or something like that.

Q. Have you also noticed in recent years that we have had some of these bantam stores coming into the area, like the Speedee Marts?

A. I never never have seen one of those Speedee Marts.

Q. In your reading of the trade papers have you read at all about these bantam stores being opened up in this area?

A. We don't have it in our area.

Q. You haven't read about it in the Los Angeles metropolitan area?

A. Yes, I have read it, but we don't have it down in our area.

Q. In this same time that you refer to in Paragraph 3, where you have said you have seen a decline in the number of single store grocery retailers, have you seen other companies start in business and prosper and succeed?

A. Oh, yes.

Q. Are you acquainted with Manuel Gertmenian?

A. Manuel who?

Q. Manuel Gertmenian.

A. I have heard of him. I think he has a store over there in Alhambra on Commonwealth.

Q. Yes. Across from Safeway.

[fol. 201] A. That was over there used to be Commonwealth Market and this fellow bought it when Safeway opened across the street. I suppose naturally they want to sell it.

Q. Have you read of others like Ted Wood of Pantry Markets starting in the business?

A. That is in Pasadena.

Q. Yes.

A. I heard but I don't know them.

Q. As a matter of fact, in recent years you have read about a number of people who have started in the business and prospered and succeeded, haven't you?

A. Oh, I have seen some success to certain extent and then they go back again.

Q. Are you thinking of Fox Markets?

A. Fox Markets. The Belvedere Market, that was owned by Weinstein, I think it was, they went over there for a while in 1930's and '40's, and they opened two and three stores and all of a sudden they disappeared. They used to have original big market in East Los Angeles they call Belvedere's Market. But that market over there change hands since it is built in 1927 or '25 at least 25 times.

Q. Has it been your experience, Mr. Chitjian, that the man who knows his business and is willing to work hard and get ahead, like Gertmenian or Joe Hughes or Ted Wood—

A. You can still do that, but still when you go over [fol. 202] there and get in competition they just stop you. You can do just so much and you can't do any more than that.

Q. You have seen failures in the grocery business just as in any other business like Fox Markets?

A. That's right.

Q. And McDaniel's Markets?

A. Yes.

Q. Yor-Way?

A. Yor-Way still there.

Q. Didn't Yor-Way go into bankruptcy? Didn't you read about that in the trade papers?

A. No.

Q. You said you preferred to remain a single-store operator, Mr. Chitjian. Paragraph 4 says that you would testify the single-store operator cannot get into the more desirable shopping centers. Have you made any effort to do that?

A. I have for last four-five years.

Q. You have?

A. I have.

Q. What effort have you made?

A. I ask for, like I buy milk from Arden Company, see if they could be able to find me some place where I could be able to have a little bigger store that I could have something for my boys so he may be able to make a decent [fol. 203] living. But all I got out of it was, "That you couldn't do it because you don't have the name for it."

Q. Any other effort?

A. No. Sometime I ask the real estate man and I would get same answer.

Q. Do you know or have you read in the newspapers, the trade papers that you read, of these bills that are pending in Congress which are designed to help the single store operator get financial assistance from the government so he can get into a shopping center?

A. Yes.

Q. If those bills were enacted you believe it would help the smaller chains and single store operators?

A. Yes.

Q. This is a case where Congress can help; isn't that right?

A. That's right.

Q. I would like you to explain to me, Mr. Chitjian, how the merger of Von's and Shopping Bag had any effect on this shopping center problem you have described.

A. Well, one, it is in there that whenever they go, merge one with the other one, I don't have to say, I imagine everybody will know it, they just make it single unit like any other one and then their buying power and their advertising and their management and they could afford to sell anything cheaper and then still make money [fol. 204] and hurt the small man. Just like Easter week, last week. Not only the Shopping Bag and Von's, but some

of the major markets. They went over there and they advertise ham for 35 cents a pound and it cost us 41 cents a pound. Naturally, they being bigger, their volume get bigger and more you buy it the less it cost you.

Q. Getting back to the shopping center problem, Mr. Chitjian, before the merger Shopping Bag could get into a shopping center, couldn't it?

A. That's right.

Q. And before the merger Von's could get into a shopping center; isn't that right?

A. That's right.

Q. So did the merger have any effect on the shopping center problem you refer to in Paragraph 4?

A. Yes, because when you go over it and have it advertised two different ones, you have only one advertisement. And whenever they read it they could say we go over to Von's, there is a big one and we could get it there. And each one help each other.

Q. Would breaking up the merger of Von's and Shopping Bag help you in any way to get into a shopping center?

A. Well, not necessarily, but it would help because if those chain stores they don't get up and get bigger and bigger, small store instead of just momma and poppa store, [fol. 205] and then momma store, and then one corner store, and then they don't have any. If they don't get any bigger and give a little chance to the small man to do a little better living.

Q. And you feel that breaking up of the merger of Von's and Shopping Bag would help you get into a shopping center; is that your story?

A. It will help me because then if they don't have the big chain store they can't get any bigger and then I will be able to have a chance to get in one instead of the big one.

Q. I gather you would like them to break them all down into single store units.

A. I don't necessarily say break down into single, but not to have the 15 or 20 or 50 of them.

Q. You just don't like the chains?

A. I like the chains, there is nothing wrong with it. The

chain has a limit, you can go just so far. If the chain is long enough.

Q. You say in Paragraph 6 that Von's and Shopping Bag, and other chains like them, operate large warehouses, are serviced directly by railroad shippers, can buy in heavy volume and this gives them an advantage over independents and small chains in terms of inventory control.

A. That's right.

Q. You are a member of Spartan Grocers?

[fol. 206] A. That's right.

Q. Spartan is a subsidiary of Certified Grocers?

A. That's right.

Q. That is a retailer owned cooperative organization?

A. That's right.

Q. You are a part owner; is that correct?

A. That's right. As long as I am in the grocery business.

Q. Does Certified and Spartan operate large warehouses?

A. Yes.

Q. Are these large warehouses serviced directly by railroad shippers?

A. That's right.

Q. Do they operate large trucking facilities?

A. Yes.

Q. I wish you would explain to me then how Von's, which operates a warehouse, has an advantage over you in terms of inventory control.

A. Because now, like over there, you still have those adding charges. Like I go over there and buy some frozen food, and if it is less than \$25 purchase I have to pay additional, I think it is 35 cents or 50 cents. And if I buy ice cream from them, if the purchase is less than \$35 I have to pay an additional dollar and a half and an additional \$2, [fol. 207] which is around about ten per cent. But the one that they have it as much that I know it, Von's or Shopping Bag or other chains, they don't have that extra cost among them.

Q. And that is what you meant when you referred to this advantage in terms of inventory control?

A. Yes.

Q. You say in Paragraph 7 that you buy from Spartan and this enables you to get certain of the advantages, such

as quantity discounts, enjoyed by the chains on dry grocery products; is that correct?

A. That's right.

Q. It says that the large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system; is that right?

A. That's right.

Q. When you are referring to cooperatives, in that sense were you referring to Certified, Spartan and Orange Empire?

A. Yes.

Q. Is Safeway a member of any of those organizations?

A. Yes.

Q. It is? Which one?

A. I don't know. I shouldn't say 'Yes.' I imagine all the chains belong to this Certified.

[fol. 208] Q. That imagination is based on your long study of the grocery industry?

A. That's right.

Q. Is Von's a member of any of those organizations?

A. I still say I think.

Q. And that again is based on your long study of the grocery business?

A. That's right.

Q. Is Ralphs a member of any of these cooperatives?

A. I believe.

Q. And that again is based on your long study?

A. Yes.

Q. I suppose you would agree there is a little bit of conjecture here and guessing.

A. The reason I say that, I belong to Spartan. There is difference between Spartan and Certified. I am not a member of Certified directly, I am a member of Certified indirectly, because Spartan is—anyone that does less than—their weekly purchases is less than a thousand dollars they belong to Spartan, and if it's any more than that you have to belong to Certified.

Q. From your long study of the industry, Mr. Chitjian, don't you know that Safeway tried to get into Certified and couldn't?

A. I don't know.

[fol. 209] Q. And you don't know that Von's withdrew from Certified in 1949?

A. No.

Q. You say you buy your milk from Arden Farms?

A. That's right.

Q. Is that a well advertised brand?

A. Yes.

Q. Is that one of the best known brands in this area?

A. One of the best.

Q. What others are well advertised in this area?

A. Golden State.

Q. That is Foremost?

A. Foremost, yes.

Q. Any others?

A. Not that I know of.

Q. And the price at which you can sell your milk to the public is fixed by state law, is it not?

A. That's right.

Q. I wish you would explain to me, Mr. Chitjian, what competitive advantage Von's has because of its membership in Jerseymaid.

A. Well, difference is just—same thing as goes with Arden milk. When you go over there and buy Arden milk, if you buy less than \$10 you don't get any discount, if you buy a little more than \$10 you get a per cent. If you be [fol. 210] able to deliver it daily you don't get hardly any. But if you buy hundred dollars you get just that much more. And the more you buy the more discount you get out of milk company. And where I seen it, or read it in the paper, time when they go over there the state fix the prices for the milk, how much is going to be sold, and I read in the papers where this chain stores, Ralphs or Von's or wherever, they think they could sell it cheaper milk and still make money, the price set by the state. Which makes me believe that they must be plenty money in milk business.

Q. And that is what you had in mind when you referred to the advantage that Von's has by reason of its membership in Jerseymaid?

A. That's right.

Q. Do you know whether or not its investment in Jerseymaid gives it any better return than if it had a similar

amount of money invested in some other business or stock or land?

A. I don't know that.

Q. You don't believe that your ownership of your building and your leasing of portions of your building to others, which gives you a return, gives you a competitive advantage over others, do you?

A. If I rent my business to somebody else?

Q. No, no. I think you testified that you own——

[fol. 211] A. Three more tenants.

Q. The land and buildings and have three more tenants.

A. That's right.

Q. And you get a return from these tenants, don't you?

A. That's right.

Q. Do you believe that this return on your investment outside the grocery business gives you a competitive advantage in the grocery business?

A. No.

Q. Do you own any other land aside from this store property there?

A. Yes. I have eight unit apartment house.

Q. Where is that located?

A. It's on corner of Siskiyon and Spence.

Q. Did you buy that apartment house out of the profits you made from the grocery business?

A. I built that.

Q. Using money that you had made in the grocery business?

A. That's right.

Q. Where do you buy your meat, Mr. Chitjian?

A. Peddler.

Q. How about your produce?

A. Down the market, 7th and Central.

[fol. 212] Q. And you go down yourself?

A. Yes, myself or my boy.

Q. You go for the early market?

A. Now they are open 6:00 o'clock. But 1930 they was open 24 hours, so I was there 11:00 o'clock until 5:00 o'clock in the morning.

Q. You tried to pick quality produce?

A. That's right.

Q. I have been told by some single store operators, Mr.

Chitjian, if they can wait until the chains have brought their large quantities there is usually a break in the price and if you can wait you get a better price. Is there any truth in that?

A. Well, it just depends each individual. If you want quality you have to go over there and pay for it. If you just want to get any kind, well, then you wait whatever you could get.

Q. What do you do?

A. I get the best.

Q. You buy in relatively small quantities; isn't that correct?

A. Yes.

Q. And buying in small quantities you can be more selective, I guess, than someone who has to buy in huge quantities?

A. No.

[fol. 213] Q. Don't you inspect all of the produce that you buy?

A. Yes. But the one that buys the big quantity, he knows just what he is going to get too because he has sample right there.

Q. A sample, did you say?

A. I mean wherever he is going to buy products it is right there, he could see it.

Q. In Paragraph 8, Mr. Chitjian, you refer to market share of the 8 largest, the 9 largest, the 15 largest and the 20 largest grocery chains in the area. You say you were shown a defendants' exhibit. I am going to ask you to look at a document which is marked Exhibit 1 in the Fairbank deposition and I will ask you if this is the exhibit that you saw before making this statement.

A. Yes.

Q. That exhibit shows market shares of the top 3, does it not?

A. Yes.

Q. And it shows the market share of the top 4?

A. Yes.

Q. And it shows the market share of the top 5?

A. (The witness indicated by nodding head up and down.)

Q. You don't mention that in your Paragraph 8, those market shares, do you?

A. No.

[fol. 214] Q. Looking at that chart would you agree with me that in the period from 1952 to the middle of 1960 the market share of the top 5 chains in the area declined?

Mr. Hughes: I object on the ground that the chart speaks for itself.

Mr. Alsup: Q. Would you look at it, please?

A. I wouldn't be able to answer that because all I know is just what I have seen in the chart.

Q. What does the chart indicate to you in that respect?

A. Just whatever it says in there.

Q. It doesn't say in your Paragraph 8 anything about the top 3, 4 or 5. What I want to know from you is why did you omit the top 3, 4 and 5 from your Paragraph 8?

A. Well, I was asked, and whatever I was asked I gave it as my own.

Q. As a matter of fact, all these affidavits and statements read about the same and you just signed what was shown to you; isn't that right?

A. No, I wouldn't say that, because whatever is in the affidavit, that is what I said. Except wherever the exhibit got in here, that is as I said it isn't shown to me. It isn't that I say that.

Q. You didn't deliberately omit from your Paragraph 8 any comment on the top 3, 4 or 5?

A. No.

[fol. 215] Q. That was just the way the statement was shown to you?

A. That's right.

Q. Do you have any idea, Mr. Chitjian, from your study of the industry what happened to the market share of Safeway in the period 1952 to 1960?

A. Yes. It happens same thing like anything, they go up and down.

Q. Dropping down?

A. Down and up. Of course, last year they all dropped down.

Q. Do you know what has happened to the market share of Ralphs in the period 1952 to 1960?

A. No.

Q. If I ask you the same question about Thriftimart, Von's—

A. I know Thriftimart.

Q. You tell me about Thriftimart.

A. Thriftimart started, as much I know, I think they merged in 1953 or '54 with Smart & Final—rather, Smart & Final merged with Thriftimart and they just keep on going up from \$23 to \$29—

Q. That is the value of their stock went up?

A. That's right.

Q. Smart & Final was not a grocery retailer, was it?  
[fol. 216] A. They wasn't in the retail business, no. They are wholesale.

Q. It was a grocery wholesale business?

A. That's right.

Q. Would you include Fox Markets in the top 8 in 1958?

A. Fox? I don't think they had it in 1952 that strong.

Q. 1958?

A. '58, yes.

Q. You would say they were in the top 8 in that period?

A. Well, I don't know whether it is top 8 or top 10, but it was on there.

Q. And since that time Fox Markets went into bankruptcy, didn't they?

A. That's right.

Q. Did you read in the trade papers that the reason generally given for that was that they tried to expand too rapidly and were undercapitalized?

A. That's right.

Q. How about McDaniel's?

A. Same.

Q. How about Yor-Way?

A. I don't know about Yor-Way. Yor-Way I don't think has more than five stores, did they? Not even that many.

Mr. Alsup: Off the record.

(Discussion off the record.)

[fol. 217] Mr. Alsup: Q. Would you look at Paragraph 10 of your statement, Mr. Chitjian?

A. Yes.

Q. You say there that Von's and Shopping Bag, along

with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant are among the leading firms in the area.

A. That's right.

Q. What area are you referring to there?

A. East Los Angeles.

Q. East Los Angeles?

A. Yes.

Q. That is the area of your store?

A. That is where my store is, yes.

Q. Are these the major firms that you refer to in Paragraph 15 of your statement?

A. Yes.

Q. Do you have any knowledge of your own that Safeway intends to merge with any of the other companies listed in Paragraph 10?

A. No.

Q. Do you have any knowledge that Von's intends to merge with any of the other companies—

A. Besides Shopping Bag?

Q. Yes.

[fol. 218] A. No.

Q. Do you have any knowledge that Ralphs intends to merge with any of the other companies listed in Paragraph 10?

A. No.

Q. How about Market Basket?

A. No.

Q. How about Thriftmart?

A. No.

Q. How about Alpha Beta?

A. No.

Q. How about Mayfair?

A. No.

Q. How about Food Giant?

A. No.

Q. Then this statement in Paragraph 14, that if this merger of Von's and Shopping Bag is permitted that there will probably be other mergers between and involving these companies we have just talked about, the major chains, that is just guess and speculation on your part, isn't it?

A. That's right.

Q. In Paragraph 12 you state that you would testify you face very vigorous competition from Von's. That is correct?

A. That's right.

[fol. 219] Q. Did you face vigorous competition from them before the merger?

A. Well, I wouldn't say one way or the other. I imagine it is just as much. It could be more so.

Q. Did you face vigorous competition from Shopping Bag before it merged with Von's?

A. Same as Von's.

Q. You haven't seen any change since the merger?

A. Not enough to do it, but I have seen a change.

Q. What changes have you seen?

A. Well, when they were together they are doing more business and they are taking more from the smaller retailers like me than they have before merging.

Q. What is the basis for that statement, Mr. Chitjian?

A. Because we could hear it in a store where they said, "I am going to Von's, when they are Von's and Shopping Bag together we could get better service, cheaper prices."

Q. You have heard this in your own store?

A. In my own store.

Q. Are Von's and Shopping Bag's prices less than those of other chains in the area?

A. In some instances.

Q. And was that true before the merger?

A. Well, I couldn't just say exactly how much was it, [fol. 220] but there was.

Q. And it is true now?

A. It is true now.

Q. In Paragraph 13 of your statement, Mr. Chitjian, it is stated that you would testify there have been a number of other acquisitions and consolidations in the retail grocery field since 1948. Which ones do you have in mind?

A. Well, they had the Mayfair, Alpha Beta, Raisin, Lucky.

Q. Is that all?

A. That's all I know now.

Q. Do you know whether Mayfair has sold more stores in this area than it has bought?

A. In the last ten years.

Q. You say you do?

A. Yes, I do.

Q. They have sold more than they have bought?

A. You mean stores more than they have builded?

Q. Have they sold more stores to other people, single store operators, in the last ten years than they have bought?

A. I wouldn't know whether it is more or less but I have heard that they have sold some.

Q. When did the Alpha Beta-Raisin merger occur?

A. I think just two or three years ago.

Q. About 1960?

[fol. 221] A. I imagine.

Q. Is that to the best of your recollection?

A. That's right.

Q. That again is based on your study of the industry?

A. That's right.

Q. Do you know any of the circumstances regarding that sale by the Raisin family?

A. No.

Q. Do you know whether the Raisin family still operates the liquor departments in the stores?

A. I heard that.

Q. You know that?

A. I heard that.

Q. You don't know anything about the circumstances which led the Raisins to sell out?

A. No.

Q. When did Lucky make an acquisition?

A. That is last five years.

Q. What did they acquire?

A. Where did they went?

Q. What company did Lucky acquire?

A. I think they bought it Best Buy or Fair Buy, or something like that. They go and buy small ones.

Q. And those are the only ones that you had in mind when you referred to other acquisitions and consolidations?

[fol. 222] A. That's right.

Q. You state in Paragraph 14 that this merger of Von's and Shopping Bag is a "major stride in increasing the market share of the large chains." What did you mean by that "major stride" language?

A. I call it chain stores and some day that they have

merger among themselves and then we will have just one or two.

Q. Since we went over this before, this is just pure speculation and surmise on your part?

A. That's right.

Q. Do you know how much the merger of Von's and Shopping Bag increased the market share of Von's?

A. No.

Q. You don't know whether it was two per cent or three per cent or ten per cent?

A. No.

Q. You do know that the merger of Von's and Shopping Bag didn't increase the market share of Safeway.

A. I don't know that either. I haven't look at the market reports so I wouldn't know.

Q. Did the merger of Von's and Shopping Bag increase the market share of Thriftimart?

A. No.

Q. Or of Ralphs?

[fol. 223] A. I don't know about Ralphs.

Q. Do you know what a monopoly is, Mr. Chitjian?

A. Well, as much that I understand it means just bring it all together and have just the whole thing by yourself.

Q. And your statement that this merger will have the effect of tending to create a monopoly, that again is based on speculation and surmise on your part?

A. That's right.

Q. And your statement that it will have the effect of substantially lessening competition, that again is based on speculation and surmise on your part?

A. That's right.

Q. It is true that you faced vigorous competition from Von's and Shopping Bag before they merged?

A. No. It isn't enough that I could say I have felt it one way or the other. But more they took—

Q. I don't think you understood my question, Mr. Chitjian. When you say that you haven't felt it one way or the other what do you mean?

A. I mean businesswise, losing business.

Q. That is you didn't feel it before they merged?

A. That is what I said, I couldn't tell much difference between how much I suffer businesswise before they merge or after they merge.

Mr. Alsup: I have no further questions.

[fol. 224] (A short recess was taken.)

Mr. Hughes: I would like to have this paper entitled "Testimony of Kasper Chitjian" marked for identification.

(The document referred to was marked by the notary public as Chitjian Exhibit No. 1 for identification, a carbon copy of which is attached hereto.)

### Cross-examination

By Mr. Hughes:

Q. Mr. Chitjian, is this paper the paper that you have been referring to you in your examination by Mr. Alsup?

A. Yes.

Q. Mr. Chitjian, you stated that you bought 50 shares of Smart & Final stock back in about 1936?

A. Yes.

Q. What has happened to that stock since that time?

A. Well, the way it has happened was 50 shares, and it was, I think, between \$18 and \$20 a share and then all I got out of there was every year or two or five years they just keep on giving me they call share dividend. And then that is how it happened it came up to that much.

Q. But today this is Thriftimart stock; is that correct?

A. Yes. Because Smart & Final bought by Haas Baruch & Company, so finally Thriftimart bought Smart & Final and they sold two to one.

[fol. 225] Q. What business was Smart & Final in when you bought your stock?

A. Wholesale groceries.

Q. What business is Thriftimart in?

A. Retail grocery. I imagine now they got retail and wholesale, because they own Smart & Final too.

Q. Is there still a Smart & Final in existence?

A. Yes. Smart & Final-Iris. But then they are Thriftimart.

Q. Who does Smart & Final sell to today?

A. Retailers.

Q. Independents or chains?

A. Independents.

Q. Do you know the market value of your Thriftmart stock today? You said you had 600 shares.

A. I think it is about \$21.

Q. It has now become 600 shares?

A. That's right.

Q. From your original investment?

A. That's right.

Q. You stated in your testimony that you had some customers that came from all over. What did you mean by that?

A. Well, man like me staying in one place since 1927, and during the time of 1930's, where there wasn't any chain [fol. 226] stores or any competition, well, I had customers nearby and they have habit, and they move away and wherever they did they still come back to the store because service and whatever I have.

Q. How far do some of these people come from?

A. They could come back as far as five, ten miles.

Q. What per cent of your business do you think is accounted for by these particular customers?

A. Oh, I couldn't say that percentage. But I imagine I would have at least ten per cent.

Q. That is a good percentage of your business?

A. Ten per cent of it.

Q. You have talked about competition with individual stores and we mentioned a lot of individual stores within about a four miles area. Who sets the prices in the grocery industry insofar as you are concerned?

A. Well, I imagine chain store association does it, because we have that Black book, as I stated on one statement, that it comes monthly whole book and then every day that you get two-three sheets of it and tell you what went up and what went down, and that is by Safeway, Thriftmart, Von's Alpha Beta.

Q. Are these all the names that are listed in the Black book?

A. I think there is four or five names listed in the [fol. 227] Black book. And each company, because there is more than one Black book, so they call Black book, one something else, and each one use different companies.

Q. How do you establish the prices for your store?

A. Well, before we had this Black book, or whatever is in there, we used to go over there and take our own invoice and decide according to that.

Q. How long ago was that?

A. About ten-fifteen years ago. But now we got a Black book and everything is in there and when we get groceries from Spartan, either I or my boy get the Black book and see what the price is, 59 cent sugar or 57 cents, and then we mark according to them.

Q. Whose price is this?

A. The chain stores.

Q. Which particular chain store do you follow?

A. We don't follow anyone, because seems to be that all about the same, more or less.

Q. How many different items are listed in that Black book, approximately?

A. It is thousands. I imagine it has every bit of three, four, five thousand.

Q. It is quite likely that some of those prices are going to be different.

A. Very few. There is difference. Some market they like specialize on certain item like maybe Crisco. Some [fol. 228] market like to sell Crisco a little cheaper than the other one, or vice versa.

Q. Out of those thousands of items Von's is certain to be higher on some items and lower on some items than others?

Mr. Alsup: I object to the form of the question on the ground that it is argumentative and calls for the conclusion of the witness and is leading and suggestive.

Mr. Hughes: It is based upon your examination.

Q. You can answer the question.

A. It could be.

Q. You stated in your testimony that you have attempted to get a larger location for your store.

A. That's right.

Q. You have stated on occasion that you tried through the cooperative and you have also tried through real estate men. On how many different occasions did you attempt to find a larger site?

A. Oh, I imagine I could try to—every time I get some-

one, I get the Arden man, or if I see the real estate man, or if I see the Foremost man. I will ask them.

Q. How many times do you think you asked them?

A. I would say at least 50 times. Of course, I couldn't tell that, I don't count it.

Q. What is the answer that you get?

[fol. 229] A. That I am not well known enough that I be able to go ahead and have chance to get such a place like that.

Q. Are you going to continue to try to get a site like that?

A. I would, but I have almost given up the hope, that it's useless.

Q. You are a member of Spartan Cooperative. Have you ever belonged to any other cooperative?

A. No.

Q. In his examination Mr. Alsup stated that Von's got out of Certified in 1949. Do you know if Shopping Bag is in Certified?

A. As I said in there, that I don't belong to Certified so I didn't know who belongs to Certified or not.

Q. Mr. Chitjian, you stated in response to a question from Mr. Alsup that your conclusions in Paragraph 14 were to some extent the result of guess or speculation or surmise. Is this guess, speculation or surmise based upon your observation of what has happened in the grocery industry in the past in this area?

Mr. Alsup: I object to the form of the question, in the first place on the ground that it misstates the prior testimony; and, in the second place, it calls for conclusion, conjecture and is argumentative and suggestive.

Mr. Hughes: Q. Do you understand the question?

[fol. 230] A. I understand your question but I didn't understand his question.

Mr. Alsup: My objection was just for the record, Mr. Chitjian.

Mr. Hughes: Q. Would you answer my last question?

A. Your question was if this will be just guesswork or just my knowledge of it there. Although I do guess, but it is knowledge that whatever experience I have in grocery business, and that is the one that I base on.

Q. Mr. Chitjian, what is the method of delivery by Spartan Cooperative?

A. They got a truck they deliver.

Q. How often do they deliver?

A. Well, our store, we could get it twice a week, but you can't get it, you have to have so much otherwise they would charge you three and a half dollars every time you make an invoice.

Q. How often do you actually order from Spartan?

A. Well, I used to order twice a week but now that I have to order once a week or every other week to save that three and a half dollars. If you go over there and buy \$50 of merchandise or \$25 of merchandise it cost you three and a half dollars for the service charge.

Q. When you order from Spartan do they ever have any outs?

[fol. 231] A. Oh, yes. That is what is hurting now because I don't know how they are going to do it. For last six months I think they started to go over there and charge three and a half dollars for each invoice issued, rather each order. So there is lots of times—last week they was out of wine and I had to have some wine because someone wanted half a gallon of wine and they didn't have it, and to go and get it a case or two cases of wine, which cost about \$4 a case and I have to pay three and a half dollars to get it.

Q. Did you get it from Spartan?

A. I had to get it.

Q. Where do you buy your grocery stocks when Spartan doesn't have them available?

A. Well, Cash & Carry, which is about ten per cent above the wholesaler.

Q. Who runs the Cash & Carry?

A. Well, there is two. One is run by Thriftmart and the other one is run by Spartan.

Q. Thriftmart is Smart & Final?

A. That's right.

Q. Have you observed any changes in the Spartan organization since they were acquired by Certified?

A. Well, before it wasn't, now they have it and the small one. Sometime I feel, or I knew that it is a little bit higher than Certified because small stores, they have to [fol. 232] get small quantity. Certified has big accounts and

where they buy big amount and they get just that much more kickbacks or deals, or whatever they call it.

Q. Could you get into Certified itself if you wanted to?

A. No. I tried to get in two years ago and they refused me because they said that I wasn't doing enough business.

Mr. Hughes: That is all, Mr. Alsup.

Redirect examination.

By Mr. Alsup:

Q. This delivery charge of three and a half dollars that you referred to, Mr. Chitjian, that is the cost of having a truck and a driver deliver the goods to your store, is it not?

A. Well, it is, but they didn't have that until about two or three months ago. They add that to it.

Q. Now Von's, which runs a warehouse and has trucks and drivers who are members of the union, has a cost in making deliveries to its stores, has it not?

A. That's right. But it is different. In there, whether you buy a thousand or two thousand of groceries all at once, they deliver to just one spot. And whether that you have a delivery to make one truckload for ten or fifteen stores, and that is reason for Spartan charge lately that three and a half dollars, because they said that stops are [fol. 233] so small they have to add some delivery because each store, supposing he takes only about 50 case or 25 case of groceries, and it just takes so much time for a driver to stop there. That is the reason they want that three and a half dollars.

Q. And it costs them more to do it?

A. It cost more. But we didn't have it before. If you go over there and buy 200 cases, 500 cases, it doesn't have any.

Q. Mr. Chitjian, you have been in the grocery business for 42 years and you have testified that in that time you have seen Shopping Bag grow from a one-store operation to a 38-store operation, and Von's grow from a one-store operation to a 28-store operation, and Thriftmart and Market Basket. You had the same opportunity, did you not, Mr. Chitjian, as any of these other men like Mr. Von Der Ahe or Mr. Hayden?

A. No, I don't think that I have the same opportunities that they had, because first place they had a little more

capital than I had. In the second place, they had more who you know that I didn't have, and they have better name than I had. And all of that is counts to go forward. You just can't get up and get there unless you have someone to help you.

Q. What is the basis of your statement that Mr. Hayden had more money than you had in 1930?

A. Because I didn't have any.

[fol. 234] Q. Were you speculating, Mr. Chitjian, as to how much Mr. Hayden had?

A. Well, I don't say how much he had, but I am sure that he had something because if I didn't have nothing and if he had nothing it was more than mine.

Q. And here again you are speculating; isn't that right?

A. I am not speculating, I am sure of that. As I said, that he had more.

Q. You say that based on your long experience that you said in Paragraph 14 that there might be other mergers and that is why you were guessing; is that correct?

A. Well, I am guessing just the same as somebody else when they think that Los Angeles is going to have in 1970 ten million people. Naturally, it is just based upon their past experience or daily how they grow.

Q. And the past experience that you referred to in the examination was the fact that Mayfair had made some acquisitions and that Alpha Beta had acquired Raisin and that Lucky had made an acquisition; is that correct?

A. Correct.

Q. And that was all?

A. That's all. That's all I know now.

Q. You said that you asked Arden Dairy and Foremost Dairy to help you get into a shopping center; is that correct?

[fol. 235] A. That's right.

Q. Do you know, Mr. Chitjian, whether it would be lawful for a dairy to advance you money to get into a shopping center?

A. I didn't ask them money.

Q. I see. What did you ask them?

A. I asked them if I could be able to get in there.

Q. And who at Arden did you ask?

A. The salesman.

Q. The salesman who comes to your store?

A. That's right.

Q. And who at Foremost?

A. The same.

Q. And that is the extent of the effort you made with them?

A. That's right.

Q. I think you said there were no chain stores in 1930. Wasn't Safeway a chain in 1930?

A. I don't think that 1930 there was five Safeways in Los Angeles. I don't think anybody knew, I don't know as I said, we heard of a chain store to be in competition. We don't have it in East Los Angeles.

Q. Your whole experience basically has been in the East Los Angeles area; is that correct?

A. That's right. Except the one that what I read in the [fol. 236] papers.

Q. And you had no knowledge of the existence of any chain stores in 1930 in this area?

A. Well, the only one that I knew there was Piggly Wiggly, if that is what you call chain stores, and I think they had maybe five or six of them. They had Casius, King Cole, but there was no—we didn't call them chain stores, we just call them supermarkets. They just had a little bigger store than we had.

Q. You didn't hear of Humpty Dumpty?

A. Humpty Dumpty, yes. Humpty Dumpty was Piggly Wiggly.

Q. Did you hear of McMar?

A. I didn't hear of that.

Q. Do you know how this Black book is made up, Mr. Chitjian?

A. Well, the one who sold it to me says that they go over there every Monday morning, or whatever day is there, and they look at the prices at these chain store shelves and they get that according to that.

Q. And that is what you had in mind when you said that you imagined the chain store association sets the prices?

A. Well, that is because sometime when I was over there and look and there is most of the prices just about the [fol. 237] same, so that I assume that the association or they together look at it and set the price.

Q. What chain or association are you referring to?

A. I don't know. I imagine they have association, chain store association.

Q. You imagine?

A. Yes.

Q. Would you say this again is speculation and conjecture?

A. That's right. Because I don't belong, I don't even know.

Mr. Alsup: That is all.

Recross-examination.

By Mr. Hughes:

Q. That last particular speculation or conjecture was based upon the prices being nearly identical; isn't that correct?

A. That's right.

Mr. Vaughan: Mr. Chitjian, didn't you say you checked the Black book in trying to make your prices identical?

The Witness: I try to come as close as I could.

Mr. Hughes: Mr. Alsup, will you stipulate with us that the witness may waive signing the deposition, if he is agreeable to it?

Mr. Alsup: If the witness is agreeable.

[fol. 238] The Witness: I agree.

Mr. Alsup: Can we stipulate that it may be used and filed in court without a signature?

Mr. Hughes: Without a signature.

Mr. Coyle: Subject to the right of the parties to review it, of course, and make corrections by agreement.

Mr. Alsup: By agreement.

[fol. 238a] IN THE UNITED STATES DISTRICT COURT

Honorable CHARLES H. CARR, Judge Presiding

No. 336-60-CC Civil

[Title omitted]

**Transcript of Proceedings—June 11, 1963**

Place: Los Angeles, California

[fol. 239]      **TESTIMONY OF KENNETH CRAUN**

If subpoenaed to testify, Kenneth Craun would testify as follows:

1. He is a partner, along with his brother Bobby, in Craun's Market, located at 11943 South Paramont Boulevard, Downey, Los Angeles County, California. Craun's Market is a grocery store grossing approximately \$800,000 per year. He has been in the retail grocery business for 26 years.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Craun closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other trade publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 [fol. 240] the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization,

he would testify that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observation.

4. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only those chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result, single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

[fol. 241] 6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperatives and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry much major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to

cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of Certified with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping Bag, belong to a dairy co-operative named "Jersey Main," which gives them advantages over grocery stores which do not belong to Jersey Maid.

[fol. 242] 8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

[fol. 243] 10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmar, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehous-

ing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's and Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "Devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

[fol. 244] 14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

[fol. 245] DEPOSITION OF KENNETH E. CRAUN, taken on behalf of defendants, at 433 South Spring Street, Los Angeles, California, commencing at 10:45 A.M., Tuesday, April 16, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

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KENNETH E. CRAUN, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Vaughn:

Q. Mr. Craun, would you state your residence address, please.

A. 10703 Haledon Avenue, Downey.

Q. And you and your brother Bobby are partners in the operation of a grocery store at 11943 South Paramount Boulevard; is that correct? That is in Downey?

A. Yes.

Q. When was that grocery store first opened?

A. 1937.

Q. By whom?

A. By my dad.

Q. And you came into the business when?

A. About the end of 1945.

Q. Your brother Bobby?

A. 1947.

[fol. 246] Q. I take it that your father is still living?

A. Yes.

Q. Has he retired from active participation in the business?

A. Yes.

Q. Do you know what your father's original investment in the store was?

A. No, I couldn't tell you that. I don't know of any— That was originally more or less a ranching type country out there and it was started as a fruit stand.

Q. It started as a fruit stand?

A. Yes.

Q. Has it now expanded so that you are serving all types of grocery products?

A. Correct.

Q. Do you operate all concessions in your store, or all departments?

A. Yes.

Q. You extend credit and delivery service, do you not, at your store?

A. No delivery service.

Q. No delivery service?

A. I have some credit service.

Q. About what percentage of your business is credit?

A. Possibly ten per cent.

[fol. 247] Q. These, I take it, are to your regular customers?

A. That is correct.

Q. Are your prices about the same as other grocery stores in your vicinity?

A. Exactly.

Q. Do you know the net worth of your business in the latter part of 1945, when you first came into it?

A. No, I couldn't tell you that offhand.

Q. You couldn't even approximate it for me?

A. Of the business alone, not the property?

Q. Well, the property and the business. By the way, do you own the land, or does your partnership own the land?

A. Yes.

Q. The net worth of both the property and the business.

A. Oh, \$100,000.

Q. As of 1945?

A. I would say so.

Q. What is it today?

A. Possibly \$200,000.

Q. Can you tell me what your gross sales were in the year 1960, approximately? I don't need a definite figure or an exact figure.

A. About \$725,000 a year.

Q. How about 1961?

[fol. 248] A. About \$750,000.

Q. How about 1962?

A. \$750,000.

Q. What is the size of your store, sir?

A. 7,000 square feet.

Q. Have you remodeled it in the last five years?

A. Not buildingwise. Inside we have done some equipment remodeling, yes.

Q. Can you tell me what stores you are in competition with in the general vicinity of your stores and how far away they are from your store?

A. There is an Alpha Beta Market directly across the street, there is a Boy's Market, All American Market, Von's Market—

Q. Let us slow down. The Boy's Market, how far away is that?

A. Half a mile.

Q. You said what was next, Ralphs?

A. All American.

Q. I beg your pardon. How far is that?

A. One mile.

Q. You said Von's?

A. Von's.

Q. Where is that?

A. A mile and a half. Shopping Bag one mile, Ralphs [fol. 249] one mile, Safeway two miles.

Q. Any others?

A. Hiram's about three miles, Udisco Discount House, two miles.

Q. Any other single store operators or small concerns operating stores within two miles of yours?

A. Yes. There is Don's Market.

Q. How far away is that?

A. About a mile and a half.

Q. That is operated by Don Henry Fairbank?

A. That's right.

Q. Any others?

A. Downey Ranch Market.

Q. How far is that?

A. Approximately a mile and a half. There is Farm & Home Market approximately one mile. That's about it.

Q. Is there a Liberty Market near you?

A. Well, it's a Speedee type market; is that what you want?

Q. It was a store that was previously known as the Liberty Market?

A. Yes. And it closed up.

Q. It closed up when?

A. It closed up approximately a year and a half ago—about a year ago I would say and it has re-opened now as a [fol. 250] Speedee Mart.

Q. Is it a Speedee Mart or something like a Speedee Mart?

A. It is not called Speedee Mart. It is Liberty Market. No volume, no advertising.

Q. About how far away from you is that?

A. Oh, about half a mile.

Q. Have you ever been in that store?

A. Yes, I have once.

Q. Were you in it when it was under its prior ownership?

A. Yes, I was.

Q. Did you know a Mr. Morris Wallin?

A. Yes.

Q. He was one of the operators of the store, was he not?

A. That's right.

Q. I take it that is a small store.

A. Yes.

Q. How many square feet would you say?

A. 2,000.

Q. When you were in the store, and when it was under Mr. Wallin's ownership, did you think that it was clean?

A. For what he had to work with, yes.

Q. Do you think it was well operated?

[fol. 251] A. There again for what he had there I thought it was well operated, yes.

Q. I take it you think he had limitations in facilities.

A. He had some drawbacks, yes.

Q. Drawbacks in size?

A. I would say the size hurt him a little.

Q. What else hurt him?

A. The thing that stopped him was the opening of the Boy's Market across the street.

Q. Have you ever been in Don's Market?

A. Yes, I have.

Q. How recently?

A. Six months.

Q. How often do you go there?

A. Possibly once every six months.

Q. Is that a good operation do you think?

A. Yes.

Q. Does it appear to be a successful operation?

A. It appears to be.

Q. When was the Alpha Beta Market directly across the street from you constructed?

A. Approximately eight years ago as a Raisin Market.

Q. And this Boy's Market a half a mile away, when was that constructed?

A. A year ago last August the 13th.

[fol. 252] Q. That is only a half a mile away?

A. Yes.

Q. I take it that you were able to maintain your sales volume despite the opening of that store.

A. Yes, we were.

Q. You mentioned the Unimart Discount House.

Mr. Coyle: He didn't mention Unimart.

Mr. Vaughn: I beg your pardon.

Q. That was Udisco?

A. Yes.

Q. That is two miles away?

A. Yes.

Q. There is a Unimart in the Downey area, isn't there?

A. No.

Q. I am sorry, I have them mixed up. When was the Udisco opened?

A. About 18 months, along in there. I am not positive on that.

Q. How about the All American Market a mile away, when was that opened?

A. That has been there for five or six years I would say.

Q. How about the Von's Market a mile and a half away, when was that opened?

[fol. 253] A. I would say around 1960, somewhere in there. I am not sure on that.

Q. How about the Shopping Bag a mile away?

A. That was built at the construction of the Stonewood

Shopping Center, and that has been, I would say, three or four years. I am not sure.

Q. How about Ralphs Market a mile away?

A. Probably four or five years. I am not sure. Four years.

Q. Do you have a copy of the statement of your testimony, Mr. Craun, that you can refer to?

A. Yes, I do.

Q. Would you look at Paragraph 3 of that statement. You state, "On the basis of his—" I guess that is your "—continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined."

Can you tell me what study you made to reach that conclusion?

A. Well, Liberty Market, of course, was closed for some time. There has been a number of change of operators, operators that have been at one time fairly good sized volume operators which has declined. Their businesses have declined down to a two and three-man type operation now. [fol. 254] Q. Such as?

A. Such as it used to be Horton's Market which is now Benson's.

Q. Is that in Downey?

A. Yes, that is in Downey. It doesn't do much business now, Downey Ranch Market has been in continual trouble.

Q. How do you know that?

A. Because they happen to be pretty good friends of mine and they have told me, that's why.

Q. How long has that market been there, by the way?

A. Oh, I think about probably five years. I am not sure about that.

Q. The same ownership as when it first opened?

A. Yes. They have recently sold part of their business, their produce business out for extra capital. They are trying to sell the balance of it.

Q. The Liberty Market is now being operated by somebody, is it not?

A. Yes. If you want to call it that.

Q. What do you mean by that? You mean they don't do very much business there?

A. I would say they aren't doing too much, no.

Q. Downey Ranch Market is still being operated?

A. They are still being operated.

[fol. 255] Q. Horton's Market is now Benson's Market, presumably operating?

A. That is correct.

Q. Are there any markets in your locality that have gone out of business and nobody else has come along to operate it?

A. With the exception of— There was another one. Liberty Market had a second operation in the middle of Downey that they closed up and it never became a market again after some time that it was left vacant. Well, they remodeled it and made other type stores out of it. That was in the center of Downey.

Q. Was that the extent of your study of the decline?

A. Then there was another one, it used to be owned by Kilgore & Kilgore. It was later sold to Don't Market. They could not make it run. This was within about a half a mile of Shopping Bag, maybe not that far. And one of the original partners has taken it over again.

Q. And is operating it now?

A. And is operating it somewhat, yes.

Q. How do you mean "somewhat"?

A. To the point that there again it is not doing—

Q. He is there every day, isn't he?

A. He is there, yes.

Q. What is the basis for your knowledge that he is not [fol. 256] doing much business?

A. The fact that they have told me what it was doing, more or less. I have a couple of men that have worked there that have told me. That are now working for me.

Q. Is it fair to say, Mr. Craun, that your study with regard to these single stores is pretty well confined to the Downey area where you do business?

A. That is the ones that I know most about.

Q. Do you know anything about any other area?

A. Not too much, no.

Q. You couldn't say that there has been a decline of single stores in other areas, then, I take it.

A. Yes. I follow the information put out by Certified Grocers and I find a big thing is happening. Many, many

of what we call independent operators are leaving the business. We see large concerns more or less doing the volume in Certified Grocers, which you are aware of, I am sure. The ones of my class are dwindling all over. They have some 1400 markets that they supply.

Q. Certified Grocers has 1400 markets which it supplies?

A. Which they supply. A lot of these are the chain type operations. They are still buying through Certified.

Q. What do you mean by a chain, two or more stores?

A. Two or more, three or more stores, yes. They [fol. 257] recently acquired Spartan Grocers which was nothing more than to put the independent, when they were in the way of the big volume operators within their warehouse. When they felt that their volume was no longer needed in that warehouse they had another place to put them without throwing them out.

Q. What is the basis for your statement in that respect?

A. I happened to be on the advisory board at that time when they bought Spartan Grocers.

Q. The advisory board of Certified Grocers?

A. That's correct.

Q. What is the advisory board of Certified Grocers?

A. It was strictly an invitational thing to meet with the regular board of directors of Certified Grocers.

Q. I take it you are a member of Certified.

A. Yes, I am.

Q. I take it that as a member of Certified you are actually a part owner of that company?

A. I am a stockholder of Certified Grocers. You have to be to belong.

Q. That's right. Now have you told us everything that you base your conclusion on as stated in Paragraph 3?

A. Yes, I think so.

Q. There are a number of successful single store [fol. 258] operators, are there not, in the Los Angeles metropolitan area?

A. There are some.

Q. You are one of them, aren't you?

A. Still paying my bills.

Q. Still making a profit, too, aren't you?

A. By doing more volume to make the same amount of money.

Q. You are able to do more volume?

A. Well, once in a while I pick up a little.

Q. Beg your pardon?

A. We pick up a little volume every once in a while.

Q. Is it fair to say that all of the chain stores in the Downey area that you have described have been built since 1950 or opened since 1950?

A. I would say nearly all of them.

Q. I take it you are also aware, are you not, sir, of the entry into the market of smaller concerns since 1950, new businesses which have come into existence and which have grown and succeeded?

A. In our business?

Q. Yes, in the retail grocery business.

A. Yes, there are some.

Q. Can you tell me the names of some of those people?

A. (No audible response.)

[fol. 259] Q. Let me suggest a couple of names, are you acquainted with Pantry Markets?

A. Not too well, no.

Q. Do you know that that organization entered the business in about 1954? Do you know that or don't you know that?

A. I didn't know when they entered the business.

Q. Do you know how many stores they are now operating?

A. No, I couldn't tell you that.

Q. Are you acquainted with the business activity of Michael's Markets in Orange County?

A. No. I have heard of them, that's all.

Q. You don't know when they went into business?

A. No, sir, I couldn't tell you that.

Q. Are you acquainted with Hughes Markets?

A. Yes. I know of them.

Q. Do you know when that company went into business?

A. No, I couldn't tell you when they went into business.

Q. You don't know many stores they are now operating?

A. No, I don't.

Q. Can you tell me the name of any other single store operator who went into business after 1950 and who is—

A. Not that I am familiar with.

[fol. 260] Q. Didn't Mr. Fairbank enter the business after 1950?

A. Well, yes, Fairbank. Well, Downey Ranch went into business. You are naming multiples there, people that had more than one store. That is what I thought you meant.

Q. I was doing that. Let us get back to the single store operator.

A. There has been a Speedee Mart in Downey, actual Speedee Mart in Downey that entered in business.

Q. Isn't it a fact, Mr. Craun, that there are more single store operators in the Downey area today than there were in 1950?

A. Yes, I guess there are.

Q. Would you take a moment and read Paragraph 6 of the statement of your testimony? Your conclusion in that Paragraph 6 is that chains such as Von's and Shopping Bag have an advantage over independents and small chains in terms of inventory control; is that correct?

A. They have— Yes, they have a better control.

Q. Aren't you able, operating one store, to adequately control your inventory?

A. In some cases we can, yes.

Q. Aren't you able to do it in all cases?

A. No, not in all cases.

Q. Why not?

A. Well, there again we are relying on somebody out of [fol. 261] our own organization to do our buying for us. Certified Grocers, that we mentioned before. And there are many times when due to special deals or price declines or increases where they will be without merchandise. The out of stock situation will occur because of this. So I would say they are operating their warehouses and can get to trouble and have it corrected faster than Certified Grocers.

Q. I take it you are not saying that the chains don't have instances where they run short of an item or have problems in supplying their stores.

A. I don't think they have as much problem.

Q. On what do you base that, sir?

A. There again Certified is operating financially, trying to operate as efficiently as possible and there are certain tax periods and things where they will run out of stock,

where due to the fact that the Board of Directors and what have you, have instructed them to do so, where the average man cannot get his wishes there. They can't—

Q. Don't you think that Von's tries to reduce their inventory to the bare minimum at tax time?

A. Possibly so. But they can assume their requirements, I believe, easier than the Certified Grocers can per store.

Q. Have you ever been out to Von's warehouse?

A. No.

[fol. 262] Q. Have you ever seen the statistics on the efficiency with which they run that warehouse?

A. No, I haven't.

Q. So isn't it fair to say that you are speculating as to this comparison?

A. I am assuming this, but I would say they have better inventory control. That was the question, I believe.

Q. In the operation of 60 or 70 stores don't you have far more and many more complex problems in distribution than you do in the case of one store?

A. They have more men to handle those situations.

Q. More men than Certified?

A. Per store, probably.

Q. And again you don't know, you are guessing aren't you?

A. I am assuming.

Q. Guessing, aren't you?

A. I am assuming.

Q. Let us assume that Von's has more men to handle their warehousing problems. That means that this costs them more, does it not, than Certified?

A. They have— I am not saying— I don't know anything about their costs of operation of warehousing at all. I don't know anything about it. I do know that they are buying in quantities now that will give them maximum [fol. 263] discounts and rebates and which we all have to have, and I don't know how they distribute those profits, whether it is all used up in warehousing or whether it makes a profitable thing. At one time Mr. Von Der Ahe belonged to Certified Grocers.

Q. That's right.

A. And he saw fit to leave.

Q. That's right.

A. There must have been a reason.

Q. Do you know what that reason is?

A. I don't think he would have left Certified Grocers to go into an operation that wasn't you know—that wouldn't be profitable to him. I don't know.

Q. But you don't know, though?

A. I would assume, again, that he saw something that made it lucrative for him to build his own warehouses.

Q. Could it have been that the problems of distribution to a large chain became so complex that he had to take it out of the hands of Certified simply because he had complex problems that a single store operator wouldn't have?

A. It could have been.

Q. That could have been, couldn't it?

A. I don't know.

Q. Is there any way that you can see where a merger of Von's and Shopping Bag affected in any way the ap-[fol. 264] parent disadvantage which you say a single store operator is under in the distribution of their products?

A. Give me that one again.

Mr. Vaughn: Will you read it back, please.

(The reporter read the pending question.)

The Witness: No, I can't.

Mr. Vaughn: Q. The merger didn't affect that one way or the other, did it?

A. Not that I can see, except the only thing is it just gave them more power in, say, Downey or Los Angeles County, or Orange County, or any other place you are talking about. I can't see where the merger helped their distribution except to distribute to the people, if that is what you are talking about. It gave them two pretty nice outlets in the town that I am located in.

Q. Those outlets were being operated prior to the merger, were they not?

A. Yes, they were being operated prior.

Q. And they are still being operated?

A. They are still being operated.

Q. They were being operated successfully prior to the merger, were they not?

A. Yes.

Q. They were good competition prior to the merger, were they not?

[fol. 265] A. They were competition.

Q. They still are?

A. They still are.

Q. Has that competition become any less vigorous since the merger?

A. No.

Q. I meant to ask you about paragraph 4 of your statement. I passed that by. That refers to the shopping center problem.

A. Yes.

Q. Have you ever tried to get into a shopping center, Mr. Craun?

A. No, sir, I haven't.

Q. So I take it that anything that you know about the shopping center problem, or the difficulty which single store operators have, or smaller concerns have in getting into shopping centers is based on what you have heard from others and from what you have read; is that right?

A. Well, when I say I haven't tried, we thought about it at one time and we were told by a rather large concern that even though we have a pretty fair financial statement that it was practically impossible due to the fact that major names were wanted in those stores as drawing cards. Somebody that could advertise in metropolitan papers. Where people coming into new locations already know about them [fol. 266] from wherever they had moved from. They moved from a developed place, say in Los Angeles County, and now we move to Orange County and here comes the market right up that we have been trading with all this time. So naturally they want somebody with a little power, a little pull, and this is it.

This is customer acceptance and it is already accepted when they come in. They open their doors, they are in business.

Q. Von's had a well-known name prior to the merger, did it not?

A. Yes.

Q. And so did Shopping Bag?

A. Yes.

Q. And presumably both of those concerns prior to the merger could have gotten into, and in fact did get into shopping centers; isn't that right?

A. Yes.

Q. Presumably Von's is able to get into shopping centers now, is it not?

A. Correct.

Q. Do you see any way in which the merger of Von's and Shopping Bag has affected this shopping center problem?

A. Just makes them more in demand.

Q. Makes what more?

A. Makes their company now more in demand because [fol. 267] now you've got the combination of two.

Q. How does that make them more in demand?

A. You have the combination of two big names.

Q. You mean the developers now want Von's and Shopping Bag more than they wanted Von's or Shopping Bag before?

A. I would say that they would get the prime area chance and where they wouldn't have problems because now you've got a combination of two big ones run by one—practically one head that has both been successful, but you've got them combined now so that actually the developer is getting, you might say, two for one.

Q. Would you say that the small concern is any better off or any worse off in this shopping center problem than he was before the merger?

A. I would say that he would be worse off.

Q. Why is that?

A. Because there are other mergers. This is not the only one. This is probably the biggest one in our area. But now these people could look around, they have—I don't know what to say here—they have more bigger type operations to choose from, the developer does, and I would say this practically kills the independent man of any chances, because heretofore there has always been a chance that they might not take one operation in there, a big operation, and, well, there could be a chance possibly if a guy was of a [fol. 268] Triple A status where he could financially get in there. But I think because of those mergers it eliminates any possibility.

Q. Let us talk about that a minute. Who were the firms that could get into shopping centers?

A. Well, generally you will find Hiram's, Food Giant, Safeway, Ralphs, Von's-Shopping Bag, Thriftmart.

Q. Market Basket?

A. Market Basket. Numerous. Lucky Markets.

Q. Has Market Basket engaged in any acquisitions that you know about?

A. Not that I am familiar with.

Q. How about Thriftmart?

A. Not that I know of.

Q. Safeway?

A. Not that I know of.

Q. Ralphs?

A. No.

Q. Not that you know of?

A. No.

Q. Prior to its merger with Shopping Bag Von's had not engaged in any mergers that you know of; isn't that right?

A. That's correct.

Q. And Shopping Bag had engaged in none; isn't that right?

[fol. 269] A. Not that I know of.

Q. So these firms were large and able to get into shopping centers and had not merged; is that correct?

A. That's correct.

Q. So you don't have to merge to get into a shopping center, do you?

A. I am saying that before the merger they had to take somebody. So naturally these people could get in. Now I say with these mergers it becomes easier for the ones that are merging. It becomes much easier.

Q. Isn't it a fact that the Von's-Shopping Bag merger actually eliminated one concern from competition for shopping center sites?

A. For shopping center sites?

Q. Yes. You have one less looking for shopping center sites than you did before, don't you?

A. What is the difference?

Q. Isn't it correct that you have one less concern—

A. One less concern for the developers.

Q. —with a Triple A rating looking for shopping center sites?

A. One less for the developers looking into, because now they can do it by looking into one.

Q. Let us talk about the other mergers that you have in mind right now.

[fol. 270] A. Which one do you want to talk about?

Q. You tell me the ones that you had in mind when you spoke of mergers.

A. Alpha Beta-American.

Q. That has happened since the Von's-Shopping Bag merger, has it not?

A. Yes, it has.

Q. And this is the way that American Stores entered this market. American Stores had no stores here prior to that merger; isn't that right?

A. No.

Q. American Stores had no stores——

A. In our area.

Q. That is correct, is it not?

A. That is correct.

Q. What other mergers do you have in mind?

A. Lucky-Hiram's.

Q. When did that take place?

A. I couldn't tell you the time when that took place. Three, four years.

Q. Did Lucky have any stores in the Los Angeles metropolitan area before its acquisition of Hiram's?

A. I believe they did.

Q. Do you know how many?

A. No, I don't.

[fol. 271] Q. What is another merger?

A. Good Giant, but that was with some other type of business. There has been other small ones. Let's see, who are some of them? I couldn't tell you offhand any more. Those were the big ones, you know.

Q. Those are the ones that you had in mind when you signed this statement; is that right?

And Von's-Shopping Bag.

Q. And Von's-Shopping Bag.

A. Yes.

Q. And the two that you mention, do you know if Lucky

Stores—Was Hiram's able to get in shopping centers? Did it have a Triple A financial rating before it was acquired by Lucky?

A. Yes.

Q. Was Alpha Beta able to get in shopping centers prior to its acquisition by American Stores?

A. Yes. Since the acquisition of Alpha Beta by American I think they opened--What is it?—26 stores last year.

Q. Do you do your meat buying for your concern?

A. Yes, I do.

Q. Where do you buy the meat?

A. Our beef are you speaking now?

Q. Yes.

[fol. 272] A. Ruehti Brothers.

Q. Are you able to buy your meat for prices which are comparable to those which chains are able to buy their meat?

A. No.

Q. How do you know that?

A. Well, I know that we don't naturally buy as much. That would be rather ridiculous. We are paying approximately, from the market reports, two to three cents a pound more than major buyers.

Q. What market reports are those?

A. That we see that we are supplied with a Ruehti Brothers. They do not deal with chain market operators. They supply us with this information. We know at all times what our competition is paying for meat, more or less.

Q. Do you have self-service meat or do you have a butcher?

A. No, we have service meat.

Q. In that way you are able to make better use of the beef that you buy, are you not, you are able to make it go further?

A. No.

Mr. Coyle: I am not sure that he understood the previous question when he said he had service meat. Maybe you should develop whether it is self-service.

Mr. Vaughn: Q. I thought service meat means a [fol. 273] butcher.

A. We have a butcher. We have to wait on the customer, if that is what you mean.

Q. Why is that?

A. It is the only way to survive in an independent market.

Q. Is to provide personal service; isn't that right?

A. Well, if we put it out on the basis of a chain type operation, which is self-service, we would never sell it. That is the one thing we must do is have service meat or I wouldn't be here today talking because I would have been closed up before.

Q. People come into your store because they appreciate the personal service that they can get from a butcher?

A. I wouldn't say that. They come in to buy meat.

Q. Why do they come to your store instead of the self-service meat store?

A. Same reason they come in to buy a quart of milk, I guess, because we are there. I would say that has a lot to do with it.

Q. Mr. Craun, you said that you wouldn't be in business if you had self-service meat.

A. I think it would take its toll, yes.

Q. So there must be an advantage to having butcher service meat.

[fol. 274] A. There is an advantage and a disadvantage.

Q. What is the disadvantage?

A. My cost of putting that meat in the case is greater than the self-service.

Q. Labor costs?

A. Labor costs, correct.

Q. But you think you draw more customers?

A. Well, I have to stay in business and there is only one way I can do it is to have service meat.

Q. Service meat is an advantage to you, is it not?

A. Yes.

Q. Do you buy your produce?

A. We have a man that buys for us, as well as other markets, and he supplies us daily.

Q. Are you able to get as good quality produce as the chain stores?

A. I would say we can get as good quality.

Q. Comparable prices?

A. No.

Q. Why is that?

A. Because we have to have somebody pick it up. There has to be a middle man in our organization in this case. We cannot afford to pick it up from the produce markets. We cannot pick up the volume where you can get the price.

Q. There are many, many single store operators who go down to the produce market at 5:00 o'clock in the morning [fol. 275] and make their own purchases, are there not?

A. There might be.

Q. You know there are, don't you?

A. I don't know that. I don't go to that market.

Q. What milk do you sell in your store?

A. Brand?

Q. Brand of milk.

A. Do you want the brand of milk?

Q. Yes.

A. Carnation and Knudsen.

Q. Now Von's and Shopping Bag sell Jerseymaid milk, do they not?

A. I understand.

Q. You sell your Carnation and Knudsen milk at the same price as they sell this Jerseymaid milk?

A. Yes. It is state-controlled.

Q. Carnation and Knudsen are highly advertised products, are they not?

A. Yes, they are advertised products.

Q. They sell in many other areas than the Los Angeles metropolitan area, do they not?

A. Yes.

Q. Do you see any competitive advantage, and I mean by that do you think that more people are attracted to your store because you are selling Carnation and Knudsen than [fol. 276] are attracted to Von's Store because they are selling Jerseymaid?

A. Well, I don't know the acceptance on their product. I do know that we cannot—I couldn't say. I don't know the acceptance of their product Jerseymaid, except that they have so many outlets for it. It is before the people so much and in all of their outlets that possibly they do have pretty good acceptance. I wouldn't say that we have any

better acceptance. I don't think you will find Carnation a tremendous drawing card any more than any other milk.

Q. Carnation sells its milk through many more retail outlets than Jerseymaid sells its milk; isn't that right?

A. Actually in our area that we are talking about, the Orange County area, I would say no.

Q. You think Jerseymaid has more outlets than Carnation?

A. I would say so, yes.

Q. I take it, though, that you can't say that you are at any competitive disadvantage because you have Carnation and Knudsen and Von's has Jerseymaid.

A. If I understand you right, I am at a definite disadvantage in one way.

Q. Would you tell me how that is?

A. Yes. Because I don't participate in the profits of Jerseymaid or Carnation.

Q. That is the only one?

A. They are controlled by——

[fol. 277] Q. In terms of drawing people into your store there is no disadvantage but you are not making the profit that Von's is.

A. That is correct.

Q. Do you think that Von's could have invested in common stocks instead of Jerseymaid or purchased land instead of Jerseymaid and done just as well, if they did?

A. I don't know about this.

Q. In other words, the last sentence of Paragraph 7 of your statement means simply that Von's is making a profit on their investment in Jerseymaid which you are not making; is that right?

A. They are making a profit in this, yes. And because of the discounts—By dairy, I take it you mean all of the dairy products. Do you mean all the dairy products? You didn't just stipulate milk.

Q. You didn't just say milk, that's right.

A. Well, take another item, say ice cream. Definitely they are to an advantage over us.

Q. Why is that?

A. Volume discounts and only through volume discounts.

Q. You mean in purchasing?

A. In purchasing, the central warehouse, central office, central buying.

Q. Certified is now supplying its members with ice [fol. 278] cream, is it not?

A. Yes.

Q. Are you purchasing Certified's ice cream?

A. No.

Q. Why not?

A. Because it is a brand new item. I don't know what its acceptance would be. I do not handle it.

Q. Do you believe that you get your dry groceries from Certified on your shelf as cheaply as a chain gets its dry groceries on its shelves?

A. I would say we are buying from Certified Grocers as cheaply as they are in dry groceries.

Q. In other words, the products in which Certified deals you get as cheaply as a chain does; is that right?

A. The ones that they handle.

Q. Certified also has an extensive line of products under its own private label entitled "Springfield," does it not?

A. Yes.

Q. Do you purchase those products?

A. No.

Q. Why not?

A. The acceptance is very bad.

Q. Now would you turn to Paragraph 8 of your statement and read that.

[fol. 279] Mr. Craun, I would like to show you a document which has previously been identified as Fairbank Exhibit 1 in these proceedings and ask you if you have seen that or a copy of it before.

A. Yes.

Q. This is the defendants' exhibit which was shown to you prior to the time that you signed this statement?

A. No, not prior to the time I signed that statement.

Q. You saw it sometime after you signed it?

A. After I signed the statement.

Q. You will note in Paragraph 8 of your statement reference is made to the market share of the top 8, 9, 15 and 20 concerns but not to the market share of the top 3, 4 or 5 concerns. Would you have included in your statement

reference to the top 3, 4 or 5 had you seen Fairbank Exhibit 1 prior to the time that you signed your statement?

A. Yes.

Q. Does the chart, which is Fairbank Exhibit 1, confirm your observations and your opinion with respect to the market share of the top 3, 4 and 5 concerns between the years 1950 and 1960?

A. Read that back again.

(The reporter read the pending question.)

The Witness: Yes.

Mr. Vaughn: Q. In other words, sir, it is your [fol. 280] opinion that the market share of the top 3 concerns was lower in 1960 than it was in 1952; isn't that right?

A. Yes, according to your chart it is lower.

Q. And that is also according to your testimony consistent with your observations; is that right?

A. I don't know where they got this but I guess it's right. I don't know.

Q. And the same could be said of the top 4 and top 5; is that not right?

A. Yes.

Q. Is it also not a fact, sir, that the market share of the top 15 and top 20 declined in the period 1958 to 1960?

A. I think that was the period when they had the strike in there, wasn't it?

A. When was the strike?

A. In 1959.

Q. When in 1959?

A. Well, let's see. The contract came up in April. I was not on strike, we are a different local, so I don't remember the exact times. But I think it must have been—I couldn't tell you the exact time of the strike.

Q. Would it refresh your recollection at all if I were to tell you that the strike was in January 1959 for a period of four weeks?

A. I couldn't tell you. I don't know.

[fol. 281] Q. But the strike did last only for about four weeks; isn't that right?

A. I thought it was longer.

Q. It was all in 1959, wasn't it?

A. I believe it was, yes.

Q. About how long is your recollection of the strike?

A. It seemed to be longer, about six or seven weeks.

Q. In 1959?

A. Yes.

Q. So the strike was over by 1960, wasn't it?

A. Yes.

Q. Isn't it a fact that the strike then could have no effect on sales in 1960?

A. The strike had no effect on them, no.

Q. And the sales, according to this chart, for the top 15 and top 20 concerns are lower in 1960 than they were in 1958; isn't that right?

Mr. Hughes: Mr. Vaughn, I object to that.

Let us go off the record.

(Discussion off the record.)

Mr. Vaughn: I have just handed to the government a copy of an exhibit previously furnished to them which shows in figures and in table form what is depicted in chart form on Fairbank Exhibit 1, showing that the line ends on Fairbank No. 1 after the first six months of 1960.

[fol. 282] Mr. Hughes: Will you ask the witness if that is his understanding of Fairbank Exhibit 1?

Mr. Coyle: I ask that this be marked as an exhibit.

Mr. Vaughn: All right. Do you want to mark it as Craun 1?

Mr. Coyle: All right.

(The document referred to was marked by the notary public as Craun Exhibit No. 1 for identification, and is attached hereto.)

Mr. Coyle: Now would you read back the last question.

Mr. Vaughn: I will withdraw it.

Mr. Coyle: Read it back.

(The reporter read the pending question as follows:

"Q. And the sales, according to this chart, for the top 15 and top 20 concerns are lower in 1960 than they were in 1958; isn't that right")

Mr. Vaughn: Let me withdraw the question so I can try and get this straightened out.

Q. The document now before you, which is marked Craun Exhibit 1, is a table which shows the percentage share of the market for the top 20, 15, 9, 8, 5, 4 and 3 concerns in the Los Angeles metropolitan area for each year between 1950 and 1960. You will note, however, that according to the footnote only the first six months of the year 1960 are shown. It is a fact, is it not, based upon this table, [fol. 283] Craun Exhibit 1, that the market share of the top 20 and top 15 concerns was lower in 1960 than it was in 1958?

A. According to this chart it was.

Q. Is that consistent with your understanding?

A. No, it isn't, but this chart says it is.

You have no information to the contrary, have you?

A. No, no information.

Q. Have you at any time seen the table marked Craun Exhibit No. 1 before this time?

A. No.

Q. If you will turn to Paragraph 9, you state there that Shopping Bag was a profitable operation prior to the merger. On what do you base that statement?

A. Through newspaper releases that showed their profits at the end of their periods—different periods.

Q. You followed those closely, I take it?

A. I watch them, yes.

Q. Did you base your opinion in any respect on the appearance of profitable operations in the Downey area?

A. What do you mean by "appearance"? Just because they looked successful, do you mean?

Q. Yes. Or did you base it only on the newspaper account?

A. No. What they report and what it showed that they were a profitable organization.

Q. Did you observe that Shopping Bag's profits were [fol. 284] declining commencing in about 1959?

A. I wouldn't have known as much about Shopping Bag as I would have Von's.

Q. Why is that?

A. Just that I watched Von's more.

Q. You were more interested in Von's?

A. Evidently.

Q. So you are unable to say whether Shopping Bag's

profits were declining or holding about even or going up in the few years prior to the merger?

A. I know they were a profitable organization.

Q. That is all you can say?

A. That is all I can say.

Q. I would also like to go back for a moment to the chart which is Fairbank Exhibit No. 1. Were the top 20 concerns in 1950 the same as the top 20 concerns in 1960?

A. No. The top 20?

Q. Yes. That is not anything you can read from that chart. Just based upon your own experience and observations were the top 20 in 1950 the same top 20 concerns in 1960?

Mr. Knight: I think it has been asked and answered.

Mr. Vaughn: I didn't think he understood it. Maybe I am wrong.

The Witness: I still don't understand it. Give it to me again.

[fol. 285] Mr. Vaughn: Q. All right. Let me ask it this way. Can you name the top 20 concerns in the Los Angeles metropolitan area in 1960?

A. I can name part of them, I imagine.

Q. Why don't you go ahead and try.

A. Von's-Shopping Bag, Alpha Beta, Ralphs, Safeway, Thriftmart, Market Basket, Fox, Lucky, Mayfair.

Q. Would Hughes be in the top 20?

A. No, I don't believe so.

Q. Would Shoppers?

A. No, I don't believe so.

Q. Would Food Giant?

A. Food Giant.

Q. Was Food Giant in the top 20 in 1950?

A. 1950 I would say no.

Q. Was Fox in the top 20 in 1950?

A. I don't think they were accepted in 1950.

Q. They hadn't commenced their business operations by 1950, had they?

A. Could have been. I would say, no, that they weren't.

Q. They weren't in the top 20, in any event, in 1950?

A. No.

Q. Were they in 1960?

A. Yes.

[fol. 286] Q. Are they today?

A. I guess they are still going under Fox.

Q. Actually Fox has gone into bankruptcy, has it not?

A. Yes.

Q. And some of its stores have been sold off; isn't that correct?

A. I understand, yes.

Q. Some to single store operators, have they not?

A. I understand.

Q. Do you know any of the names of those single store operators?

A. No, I don't.

Q. And the balance of their stores, some 18 or so, are being operated by Food Fair; isn't that right?

A. I understand.

Q. Food Fair is a large national concern; correct?

A. I guess so.

Q. And had not previously operated any stores in the Los Angeles metropolitan area; isn't that right?

A. Not to my knowledge.

Q. So you can say, though, can you not, for no other reason than just Fox and Food Giant that the top 20 in 1950 are not the same as the top 20 in 1960?

A. Yes, they are not the same.

Q. I would like you to read Paragraph 14 of your [fol. 287] statement. You state that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains. Are those major chains to which you refer in Paragraph 14 the same as those listed in Paragraph 10 of your statement?

A. Yes, they are included.

Q. Are there any others, other than Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant?

A. There are others. There is All American, Shoppers. They are all available for mergers.

Q. I beg your pardon?

A. They are all available for mergers.

Q. How do you know that?

A. Well, it seems as though that is the trend, is to merge. And everybody wants to merge and become a little bigger.

Q. Safeway wants to merge?

A. I wouldn't put it past them.

Q. With one of the other leading chains?

A. To pick up somebody else.

Q. Do you have any special information about what Safeway's intentions are?

A. No, I don't have any special information.

Q. This is just a guess, isn't it?

[fol. 288] A. On the past records of the way these mergers have happened it wouldn't be beyond thinking about.

Q. It is a mere possibility, right?

A. It is a possibility, yes.

Q. Do you know of any plans that Ralphs has to merge with any other major chain?

A. No, I don't know of any plans, no.

Q. Market Basket?

A. Don't know of any plans.

Q. Thriftmart?

A. Don't know.

Q. Alpha Beta?

A. I have no idea.

Q. Mayfair?

A. I have no idea.

Q. Food Giant?

A. I don't know.

Q. All American?

A. I don't know.

Q. Shoppers?

A. I don't know.

Q. In other words, you don't have any special information.

A. I don't have any information, no, at this time.

Q. You just think that there has been a trend of [fol. 289] mergers in the area and in that respect you think only of the Von's-Shopping Bag merger, the American Stores-Alpha Beta merger and the Lucky-Hiram's merger; is that correct?

A. That's correct.

Q. You can't think of any others?

A. I can't think of any others.

Q. I take it that it is because of this trend in mergers that you think that the Von's-Shopping Bag merger will lead to the other mergers; is that right?

A. It would be a big step in the direction of other mergers happening.

Q. How can Von's merger with Shopping Bag influence anybody else?

A. Their operation becomes better, there again it consolidates, advertising costs are cut tremendously. Their warehousing becomes better because they have more volume.

Q. How do you know these things?

A. Because it is just that in volume it would tend to make the operations more efficient.

Q. Do you know what Von's advertising costs were prior to the merger?

A. No, I don't.

Q. Subsequent to the merger?

A. No, I don't.

[fol. 290] Q. Do you know what their warehousing costs were prior to the merger?

A. No.

Q. Subsequent to the merger?

A. No.

Q. You just feel that the bigger you are the more efficient you are; is that right?

A. Let's take advertising. Heretofore Von's advertised and Shopping Bag advertised. Now one advertisement. Correct?

Q. Yes.

A. So is that more efficient or less efficient?

Q. I don't think that really is the question. You don't know if it is more efficient or less efficient, do you?

A. I know their advertising costs would be cut in half.

Q. You have seen the figures on that?

A. I have not seen the figures.

Q. So you are just guessing but because you have one less concern advertising that costs are half as much; is that right?

Mr. Coyle: The witness has answered this. He knows that one advertisement doesn't cost as much as two. That is simple.

[fol. 291] Mr. Vaughn: Q. That is the basis?

A. That is the basis that I am going on.

Q. That is the basis for your statement?

A. Yes.

Q. The possibility of future mergers then exist because of the greater efficiencies that can be accomplished through merger; isn't that right?

A. Yes.

Q. Was there a possibility that other firms would merge prior to the Von's-Shopping Bag merger?

A. There is always a possibility.

Mr. Vaughn: I don't have anything more.

Mr. Coyle: I just have a few questions.

Cross-examination.

By Mr. Coyle:

Q. Earlier in your testimony you testified as to the increase in the net worth of your store and property. Has the land value out there increased substantially since 1950?

A. That is basically our increase in our net worth, yes, land values.

Q. You testified as to the entry into the Downey area of a number of stores. Has the population of the Downey area increased since 1950?

A. Yes, it has.

Q. Has it been a substantial increase?

[fol. 292] A. Yes, it has been a pretty fair increase. 15-20 per cent increase I would say.

Q. You referred to the strike in 1959. When a store closes for a month as a result of a strike, or any other reason, has it been in your experience that it loses customers and doesn't immediately gain them back after it re-opens?

A. That is true.

Q. Would you have any opinion as to whether the strike in 1959 might have affected the chain store sales in the first half of 1960?

A. Definitely.

Q. How would it have affected them?

A. They would have affected them by loss of volume greatly, mainly.

Q. In some of your answers you discussed the comparison between the advantages which you may get pur-

chasing through Certified and the advantages which a chain gets in purchasing directly. Was it your testimony that a chain in purchasing directly gets advantages that you don't get purchasing through Certified?

Mr. Vaughn: I will object to the question as being leading and suggestive. It is flagrantly leading and suggestive.

Mr. Coyle: Q. Was that your testimony?  
[fol. 293] A. Yes.

Q. Would you state for the record which led you to this conclusion?

A. Mainly their volume in purchasing of meats, produce, dairy products, which gives them a definite advantage. There are volume rebates received by them even in dry groceries, display allowances which they can receive from manufacturers that are not being made available to the independents, not all of them. It is a definite advantage. And those are the things that warranted my statement.

Mr. Coyle: I have no further questions.

Redirect examination.

By Mr. Vaughn:

Q. Let us talk about these volume rebates and display allowances. Isn't it true that Certified purchases more grocery products than any chain in the Los Angeles metropolitan area?

A. Yes.

Q. And isn't it true that suppliers offer to Certified the same quantity discounts as they do to the chains?

A. Correct.

Q. And the same promotional advertising allowances that they do the chains?

A. Correct. However—

Q. And aren't those savings—

[fol. 294] Mr. Hughes: The witness hadn't finished.

Mr. Vaughn: I am sorry.

The Witness: However, today in this grocery market in our area that we are speaking of, brokers, manufacturers' representatives are not calling. It is a definite trend that they, in becoming more efficient, are not calling

with their men on the independent operators as much as they have in the past because the trend is going to the bigger volume operation. So they are concentrating their forces there.

Now, I mentioned stacking allowances and display allowances, whatever you want to call them. Those allowances are paid upon participation, you know, of those products. If you participate and stack and advertise those products you receive these rebates.

Now, if they are not known to you, all of them, you do not get them. They are being made available to the chain type operation, the more powerful type operations because that is where the volume lies for these producers. And, as an afterthought, the independent is picked up.

Mr. Vaughn: Q. You are talking about power, and buying power is what I assume you mean. You previously stated that Certified has greater buying power in that it has greater volume than any chain; isn't that right?

A. This is true. But it is spread over 1400 accounts. There again the brokers and manufacturers know that they have to be efficient. So naturally they have to go to the [fol. 295] ones that are doing the biggest volume. They cannot cover everybody. So who do they cover, the big?

Q. A promotional allowance granted to Certified is passed on to its members; isn't that right?

A. If they participate.

Q. And you were advised of the promotional allowance and it was up to you—

A. We were advised of some of the rebates, I would say most of them, by Certified Grocers. However, where the brokers or manufacturers can call on one big office instead of 80 and do the same thing he can sell his product by calling on one buying office rather than calling on 80. He does it more efficiently.

I am not saying that we don't get some of these rebates. We do not get them all like your powerful organizations are getting today.

Q. You use the word "power" frequently in your testimony. What do you mean, economic power, assets?

A. There is power in numbers. And they get— And I think they are becoming more powerful because overnight they, say, double their operation and buying power and

locations. In our town overnight they became—they had two stores to do business in one town.

Take another merger we were speaking of, the Acme-Alpha Beta. Overnight two stores in one town.

[fol. 296] Q. Acme-Alpha Beta? What were the two stores?

A. They have one in Florence, but still Alpha Beta has two stores in one town.

Q. They had two stores before the merger?

A. There were two stores located there. Well, they were owned by the same people, pardon me. However, Acme picked up two stores in one town which gives two concerns four stores in one town.

Q. You equate power then to the number of stores, don't you?

A. Number of stores and by dollar volume.

Q. Fox had a lot of stores, didn't they?

A. They had several.

Q. They had good dollar volume, did they not?

A. They had dollar volume.

Q. Would you refer to them as a powerful concern?

A. They were getting there.

Q. What happened to them?

A. They did not—I would say it was more in the operation and overexpanding a little too fast.

Q. Yes, overexpanding. In other words, you could acquire a lot of stores overnight and you could expand and get yourself in financial difficulty, couldn't you?

A. However, they were not set stores. By "set stores," I mean accepted. They had not been a profitable operation [fol. 297] for a long time, possibly as the two in question, the Von's-Shopping Bag.

Q. Do you think that Von's is doing more business out of the two stores it has in Downey today than Von's and Shopping Bag were separately prior to the merger?

A. I don't know about their business out of those two stores. I would say they are doing it more efficiently, whatever they are doing.

Q. On what do you base that? Have you been in the stores?

A. I have been in the stores. The operation is more efficient.

Q. In the store?

A. Their over-all operation is more efficient. Maybe not—

Q. Are the stores more attractive?

A. No.

Q. Do they provide any added services?

A. Not that I know of.

Q. Do they charge any lower prices?

A. Not that I know of.

Q. Can you think of any reason why a shopper living in the Downey area would go to the Von's Store in Downey now where he would not have done so before the merger?

A. Had he been a Shopping Bag customer and know [fol. 298] of the merger, as one complete unit now he would feel safe in trying the other store and possibly accepting it because he felt that he was satisfied where he had been trading and so he decided to move into another location where Von's was. Well, then he would have the same secure feeling in trading with this other concern.

Q. So some people may be going to a Von's Store that went to a Shopping Bag Store before the merger?

A. Could be.

Q. Actually they are not close enough to really be drawing the same customers in Downey, are they?

A. They are in the same shopping area, yes.

Q. You think so?

A. Yes.

Q. You think there is an overlap in their draw areas in Downey?

A. Yes.

Q. Is one of your customers any more likely to go to Von's Store now than before the merger?

A. It is accepted knowledge that people feel that with the large supermarket type operation that they are getting a better price, and I believe that knowing of the Von's-Shopping Bag merger they would feel that they were getting a better action, a better treatment with the two combined. They become bigger, they have more buying power. That is the consensus of the opinion of the people.

Q. Yet you have been able to maintain your volume since the merger, have you not?

A. Yes.

Q. In fact, it has increased, has it not?

A. A small amount.

Q. Let us talk more about these brokers who go out to the larger chains. Can you name the chains these brokers cover?

A. Yes. I would say I could name them all. We have named them once before. I would be the top 20 that get the complete coverage.

Q. This was so before the merger of Von's and Shopping Bag, was it not?

A. To some extent I believe they get more treatment now than they would before.

Q. Who gets more treatment?

A. The combination of the Von's-Shopping Bag. I think they would get more consideration now than they had before.

Q. You think. Do you know, Mr. Craun, or is that just a wild guess?

A. I would say I would swear to it that they do.

Q. And on what basis would you make the statement?

A. Due to the fact that we are just repeating ourselves again, but brokers and manufacturers know where their [fol. 300] volume is. They know that if they can promote a product in Von's-Shopping Bag, Acme-Alpha Beta, we will call it, that they have tremendous coverage in that area of their product, if they can promote that product there. So there are allowances given. It is a great help to them to be able to sell products to lesser markets because of the fact that it is carried and promoted by the leading chains.

Q. The practice of the brokers in going to the larger chains is the same now as it was before the merger; isn't that right?

A. I would say it is better now than before.

Q. How do you mean?

A. Well, because—

Q. "Better"? I don't understand that.

A. They are covering more stores by calling on one buying office.

Mr. Vaughn: I have nothing more.

Mr. Bates: I would like to ask a few questions of Mr. Craun.

By Mr. Bates:

Q. In Paragraph 14 of your statement you use the word "monopoly." Would you define that word for me, please?

A. In this case I would define "monopoly" as the act of power by controlling the source of supply of a commodity, controlling the source of supply to—I believe that would be it.

[fol. 301] Q. Is that the sense in which you use that word in that paragraph?

A. Yes, that is what I think a monopoly is, so it must have been.

Q. In that sense would you say Safeway is a monopoly?

A. Well, they have not monopolized the fact that they have merged.

Q. Would you say A & P in this area is a monopoly?

A. Not in the fact that they had merged with somebody to monopolize.

Q. Then are you expanding your definition of monopoly to include a control of supplies by somebody who has merged?

A. They are coming closer to a monopoly by merging than they was before.

Q. Would you say that Von's and Shopping Bag are now a monopoly in this area?

A. They are in a lot better position to monopolize now than they were before.

Q. Using your definition, which you have just stated, would you say that Von's-Shopping Bag is a monopoly?

Mr. Coyle: I think the record should make clear that that isn't what the witness stated in his statement. He said they tended toward monopoly in his statement of testimony.

Mr. Bates: Read the question back to him, Mr. Reporter.

Please answer the question, Mr. Craun.

[fol. 302] (The reporter read the pending question.)

The Witness: It tends toward a monopoly, yes.

Mr. Bates: Q. Under your definition of monopoly is Certified a monopoly?

A. No.

Q. Under your definition of monopoly will you please name all of the monopolies you can think of, or any monopoly you can think of in the metropolitan area of Los Angeles?

Mr. Knight: What industry are you talking about? Any industry? Would you qualify that?

Mr. Bates: Yes, I will qualify it.

Q. Any in the grocery business that is a monopoly in the metropolitan area.

A. They tend toward monopoly—The ones that tend toward monopoly are Von's-Shopping Bag, Lucky-Hiram's, Acme-Alpha Beta.

Q. And that is because under your definition they control the source of supply; is that right?

A. By their power, by their merging.

Q. Will you name for me the sources of supply that are controlled by Von's-Shopping Bag?

A. Well, I would say most of their stores are source of supply.

Q. Do you define a source of supply the same as a retail outlet?

[fol. 303] A. A retail outlet.

Q. Is a source of supply?

A. To the customers, yes.

Q. Is that what you meant by source of supply, the retail outlets, in your definition?

A. That is exactly what I meant.

Q. Then any grocery store that controls its source of supply under your definition, namely the retail outlets, is tending toward monopoly?

A. When it takes a merger to do that, I say, "Yes."

Q. Is it the number of retail outlets under your definition of monopoly that tends toward—Strike that, please. I am going to ask it again.

Is it the number of retail outlets under your definition that constitutes a monopoly?

A. Yes.

Q. Do you know how many retail outlets Safeway has in the greater metropolitan area of Los Angeles?

A. No, I don't know the number.

Q. Do you know from your continuing study of the

grocery business whether Safeway has more or less retail outlets than Von's-Shopping Bag?

A. No, I don't.

Q. Do you know how many retail outlets Von's-Shopping Bag has?

[fol. 304] A. I think it is approximately 80.

Q. How many retail outlets does Mayfair have?

A. I couldn't tell you that.

Q. Can you tell me how many separate grocery concerns there are doing business in the greater metropolitan area of Los Angeles?

A. No.

Q. Can you approximate the number of grocery concerns doing business in the greater metropolitan area of Los Angeles?

A. I wouldn't guess.

Q. Would you say there are several thousand?

A. I said I wouldn't make a guess. I don't know how many.

Q. You are willing to make guesses and surmises on the effects of mergers. You state you have been in the business here for many years, continually studying, and you have no approximation of any kind as to the number of retail outlets in the greater metropolitan area of Los Angeles?

A. I wouldn't want to make a guess. I would probably be way off.

Q. I think you stated, Mr. Craun, when a store closes down because of a strike it takes a long time to get its business back; is that correct?

A. That's correct. It takes some time.

Q. How do you define "a long time" or "some time"?

[fol. 305] A. Probably six months.

Q. What is the basis for your statement?

A. My experience in the grocery business.

Q. Have you been a victim of a strike that has tied up your business?

A. No, sir.

Q. What has been your experience in that regard?

A. I have friends that have been a victim of strikes and I know what their situation was and how long it took them to get back.

Q. Then the basis of your statement is what your friends have told you regarding this situation?

A. That's correct.

Q. I think you stated that the chains operating their own warehouses receive volume rebates from manufacturers that are not available to the independents.

A. Not all of them.

Q. Is that true?

A. That's true.

Q. What rebates do they receive that are not available to the independent grocers?

A. The ones that we do not know of.

Q. If you don't know of them explain to me how you know they receive them.

A. Like I said in testimony prior, that we questioned, [fol. 306] you know, when you will be talking to brokers or manufacturers' representatives and they say, "We could not get around, we was not around, that we had so much of this product, or so much of that product," we were not contacted and this is only not myself but this is other independents, naturally it was not for us to take advantage of. If you don't know about them in time you don't get them, that's all. They are periodic.

Q. Is that all the knowledge you have upon the receipt of volume discounts by chain grocers operating their own warehouses?

A. I merely said that they have all of them presented—more presented to them than are presented to the independents, because they are a major source of distribution of product throughout the area.

Q. Mr. Craun, you stated in some of your testimony here, following the Von's merger, that overnight in Downey where there had been two stores there was only one doing business; is that correct?

A. Not one doing business. Just one operation from that time. They became one company.

Q. But there were two separate retail outlets prior to the merger; correct?

A. Correct.

Q. They were the two same separate retail outlets following the merger; is that correct?

[fol. 307] A. Correct.

Q. These two separate retail outlets following the merger were selling the same groceries from the same locations and generally to the same people, weren't they?

A. More efficiently.

Q. How did this affect your operation?

A. That put them on a more efficient basis than myself.

Q. Define "efficiency" for me as you use it here.

A. Efficiency in this case would be central buying for the two stores, centralizing personnel. Many ways that they could be more efficient.

Q. You mean they save money in the over-all operation?

A. Why, sure.

Q. How did that affect the operation of your store?

A. It gives them a better profit picture in which to expand more.

Q. It didn't affect your profit picture, did it? Didn't you make the same profit after the merger than you did before the merger?

A. Yes. But these mergers, by merging now, and the possibility of more coming, will take the profit out of my picture.

Q. Let us assume, as you have, that by the merger they create certain efficiencies and save certain moneys. That would result in them making more profit on their volume of sales, wouldn't it?

[fol. 308] A. Correct.

Q. It did not result in increasing your cost any, did it, the merger?

A. It will become, and it is becoming daily harder to do business in the face of major chains.

Q. Did you or did you not after the merger make the same rate of profit on your volume of sales as you did prior to the merger?

A. Yes.

Q. And is it not a fact that after the merger you increased your volume of sales?

A. Somewhat.

Q. And the same was true of the merger so far as American-Alpha Beta was concerned; isn't that so?

A. Yes.

Mr. Bates: That is all.

Mr. Vaughn: I have just one more short question on one subject.

By Mr. Vaughn:

Q. The strike was in 1959, right?

A. Yes.

Q. Prior to June 1959, was it not?

A. Yes.

Q. It lasted, to your recollection, for six or seven weeks?

A. Yes.

[fol. 309] Q. You say that the effect of that strike in terms of the business done in any particular market which had been struck would last for about six months; is that right?

A. I thought the effect would last that long, yes.

Q. So let us assume that this is all true. The strike prior to June 1959 could not have in any way affected the sales in 1960; isn't that right?

A. I would say that they would have their volume back by 1960, yes.

Mr. Vaughn: I have nothing further.

Recross-examination.

By Mr. Coyle:

Q. You have been testifying about advantages and disadvantages that chains get or you get. Did you ever have any experience with respect to turkeys along those lines?

A. Yes.

Q. Can you state what that experience was?

A. This last December we were quoted a price on turkeys by a large poultry concern that also supplies Von's. They do not buy a lot of quantity in this particular quality of bird that we were buying. They purchased turkeys, the same brand, absolutely witnessed by three different people in my organization, and one outside person. They bought turkeys, ten cases to be exact, at 39 cents a pound. Our price for over 500, that would be approximately 200 cases of [fol. 310] turkeys, was 41 cents loaded on the truck. And only due to the fact that I had inadvertently looked at their

shipping memo, because I figured the whole load was ours, that I run across this, that they got a lesser price than we did for a considerable lesser quantity. But their quantity that they were purchasing from this company happened to lie in another grade of turkey.

So they, in their volume dealing with this company, received a similar product for less money until the poultry house finally, after much fighting and arguing, and nearly two months of hassle, credited me back with this amount of money to put me on the same level with the Von's Market located on Florence and Paramount in Downey.

I was at a direct disadvantage selling that product. Either take less profit for my product or sell it for more and look ridiculous.

Mr. Coyle: I have no further questions.

Redirect examination.

By Mr. Vaughn:

Q. What was the name of the concern that sold you these turkeys?

A. International Poultry Company, Los Angeles.

Q. Who is the man that you dealt with?

A. We no longer deal with them. He was the sales manager. I can't recall his name. But only after we gave him [fol. 311] invoice numbers, both ours and the Von's invoice number, that he knew we was correct.

Q. This is December 1962?

A. It would be December this last year. Yes, December 1962.

Q. You state that this particular grade of turkey was delivered to your concern on a truck?

A. On a truck.

Q. With it was the same grade of turkey in a lesser quantity to be delivered to Von's; is that right?

A. That is correct.

Q. To Von's Store in Downey?

A. In Downey.

Q. Isn't it likely that they purchased this same grade of turkey for all of the other stores?

A. Yes.

Q. And isn't it likely that their purchases therefore were far in excess of yours, that is Von's purchases were far in excess of your store's purchases?

A. Yes, sir, that is correct. And exactly what we are talking about.

Q. In this particular grade of turkey?

A. In this grade of turkey. They bought more, they got a less price.

Q. Quantity discounts?

[fol. 312] A. Quantity discounts.

Mr. Vaughn: I have nothing further.

Recross-examination.

By Mr. Coyle:

Q. These turkeys were delivered in a truck owned by International Turkey Company?

A. Yes.

Mr. Coyle: Would you mark this document entitled "Testimony of Kenneth Craun" as Craun Exhibit 2, please.

(The document referred to was marked by the notary public as Craun Exhibit No. 2 for identification, a carbon copy of which is attached hereto.)

Mr. Coyle: Mr. Craun, would you be agreeable to waiving the privilege of signing this deposition and permitting us to introduce it in evidence, or the other side to introduce it in evidence unsigned?

The Witness: Would I be?

Mr. Coyle: Yes.

The Witness: Yes, it's all right.

Mr. Coyle: Is it agreeable to counsel?

Mr. Vaughn: It is quite agreeable.

Mr. Coyle: We waive the signing.

Mr. Alsup: Back on the record, it is understood in all of these cases, of course, that the witness testified under [fol. 313] oath and that he is bound by any statement that he made.

Mr. Coyle: That's right. This just eliminates the necessity of mailing it to him and having him correct it and getting it signed.

Mr. Alsup: Right.

[fol. 314]

## TESTIMONY OF RICHARD DICK

If subpoenaed to testify, Richard Dick would testify as follows:

1. He is the vice president and assistant secretary of Dick's Market, Inc., which operates a grocery store at 6015 North Figueroa Street, Los Angeles, Los Angeles County, California. Although this store was originally his father's business, the father is inactive and Mr. Dick manages the store. Dick's Market had sales of \$1,377,462.75 in 1959. He has been working in his father's grocery business for 18 years.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, he closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery [fol. 315] merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of

a big chain store in his shopping center as an attraction to other tenants. As a result, single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollars sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer [fol. 316] grocery stores are needed in the area to serve a comparable number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Thus, they have combined the advantages of Certified with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's [fol. 317] and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los

Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 percent to 39.0 percent; the market share of the 9 largest chains increased from 34.3 percent to 41.7 percent; the market share of the 15 largest chains increased from 38.4 percent to 50 percent; and the market share of the 20 largest chains increased from 40.5 percent to 54.4 percent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the larger chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a [fol. 318] history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "in-

tense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between [fol. 319] Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 320] DEPOSITION OF RICHARD DICK, taken on behalf of defendants, at 433 South Spring Street, Los Angeles, California, commencing at 9:30 A.M., Wednesday, April 17, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

RICHARD DICK, having been duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Alsup:

Q. Would you state your name and address, Mr. Dick.

A. Richard Dick. My home address is 1300 Indiana Avenue, South Pasadena.

Q. What is your business address?

A. My business address is 6015 North Figueroa. That is Los Angeles.

Q. We have been furnished with a statement entitled "Testimony of Richard Dick," which states that if subpoenaed to testify you would testify as set forth in this statement. Do you have a copy of that statement?

A. Yes, I do.

Q. Were you shown identical statements of other government witnesses at the time you were asked to sign this statement?

A. No.

[fol. 321] Q. Would you know that others were——

A. Being subpoenaed?

Q. No. That the others had furnished identical statements to the government?

A. No.

Q. This would be your testimony, I take it, Mr. Dick?

A. I would say yes.

Q. It states that you are the vice-president and assistant secretary of Dick's Market, Inc. at 6015 North Figueroa. That is correct?

A. That is correct.

Q. Who owns the stock of this corporation?

A. The stock is in the family and is divided four ways, my father, mother and younger brother.

Q. How old are you, by the way, Mr. Dick?

A. Thirty-six.

Q. I have been in your store, Mr. Dick, and I want to say that it's very attractively stocked and very attractively merchandised.

A. Thank you.

Q. What is the size of your store?

A. Now we are going to have to start to do a little guessing. It would be about 8,000 square feet, I think. It is divided up into different sections.

Q. How old is that store?

[fol. 322] A. I have been there going on 18 years and I have seen ads that were dated 1936 or '37. So the store must have been there at least that long.

Q. It looks like an old Safeway Store.

A. It was an old Sy Perkins Store. You probably never even heard of that name.

Q. No, I haven't. This has some apartments, doesn't it, on the second story above the store?

A. That's right. There are eight of them.

Q. Those are leased to tenants?

A. That is correct.

Q. It is built-in customers?

A. Yes.

Q. When did your family acquire this store, Mr. Dick?

A. In 1944.

Q. Is that the entire store or just the liquor department?

A. Just the liquor department at that time.

Q. When did you acquire the grocery department?

A. I believe that was 1949, somewhere about that.

Q. Or 1950?

A. Somewhere right about there.

Q. From whom did you buy the grocery department?

A. We actually assumed the lease—I might state it this way. My father and my uncle owned the building, my [fol. 323] father owns the master lease. At that time, 1950 or '49, the lease ran out on the grocery department and we assumed the grocery lease.

Q. Who had operated the grocery department prior to that time?

A. A fellow by the name of Vaughn Bowen.

Q. Do you run the meat department?

A. No, we do not.

Q. Is that leased out?

A. That is leased out.

Q. To whom?

A. To Mrs. Esther Wickens.

Q. That is service meat?

A. Service meat.

Q. Quality meats?

A. Let's hope so.

Q. Are the grocery department and liquor department now run as one?

A. No. Those are two separate corporations.

Q. Both family-owned?

A. Both family-owned, yes.

Q. This statement refers to sales in 1959 of \$1,377,462. Does that include the liquor department sales?

A. I would say it did, yes. I picked these figures up and I believe they are combined sales of everything.

[fol. 324] Q. That would include the meat department?

A. I think that is the way we did this. I think I totalled everything into it.

Q. You run the produce department yourself?

A. That is correct.

Q. And the delicatessen?

A. That's right.

Q. Your store is located in the middle of the block on North Figueroa, is it not?

A. Avenue 60.

Q. Would you describe the parking facilities for customers of your store?

A. The parking is in the rear of the building. In fact the entire block of Avenue 60 from corner to corner in the rear of the market there is parking.

Q. There is no parking for someone entering on Figueroa Street, he has to go around the block behind the market to enter from the south; isn't that right?

A. Unfortunately there is no parking on the main street.

Q. You have a service bakery where you bake your own good and have a snack bar there?

A. That is correct. Those departments I lease out.

Q. These sales that you have referred to, did they include the sales of the leased out bakery department?

[fol. 325] A. I would say no because the sales of those are small actually in comparison to the sales that I have stated. I was taking the departments that actually make up the bulk of the sales.

Q. What would you consider to be the trading area of your store?

A. Well, the trading area of the community the store is located in, Highland Park, would be, I would say, Avenue 60 to possibly down to Avenue 50.

Q. That is north and south.

A. We would be north, going south to Avenue 50.

Q. How about east and west?

A. Let me have my directions. Let me look at it a minute. It would be west about two more blocks, because there are markets and businesses two blocks west in that area. That is the immediate area.

Q. Can you give me a general idea of what you consider to be the area from which you draw the great majority of

your customers, whether it be a one-mile radius or a two-mile radius?

A. This is a little different than most communities, in my opinion. I would say we did draw as far out as possibly two-three miles because it is not actually consolidated into one area. People will come from Eagle Rock, South Pasadena, where we have many customers, or the Mount [fol. 326] Washington area that they refer to and Highland Park generally.

Q. Where is the nearest Von's or Shopping Bag Store located with reference to your store?

A. I would say in the Eagle Rock area on Colorado.

Q. How far away is that?

A. That would be about possibly one or two miles.

Q. More than one mile, isn't it?

A. It would be a little over one mile, I think. There is a new Von's, I believe, at South Pasadena and it takes me about five minutes to drive from my home which is not far from there.

Q. You are referring to the new Von's opposite the Safeway, the Fair Oaks outlet to the Pasadena Freeway?

A. Yes.

Q. That is a very substantial distance from Highland Park.

A. Not in distance, surprisingly. There is just the one street that goes up North Figueroa across the bridge and then you are in South Pasadena. I am not saying that is in my immediate area actually. In distance it's a lot closer than it appears. I live right there.

Q. I live out in that area too, Mr. Dick. You would say it is at least 15 minutes driving time from your store, wouldn't you?

[fol. 327] A. No, no.

Q. How long would you say?

A. I would say to that market you could drive very comfortably in ten minutes.

Q. Would you regard the Safeway Store opposite the Von's Store on Fair Oaks as a competitor of yours?

A. No.

Q. Would you regard the Market Basket Store there on Fair Oaks as a competitor of yours?

A. No.

Q. Or the Pantry Market there on Fair Oaks as a competitor of yours?

A. I would say no. I would like to add one thing to that, though. I have advertised, I don't know at the moment, but from time to time I have advertised in the advertising facilities for that general area and they are all covered under one publishing outfit. In other words, there are five papers. I may not be able to name them all, but there is the Highland Park Journal, there is the Star Review, which is, I think, the Mount Washington area, and then there is the Eagle Rock, it wouldn't be the Sentinel but I am not sure of that exactly. But we all go into the one paper. In other words, talking about competition, in a way when we advertise many times these ads all appear in these papers together.

Like my ad will be in a paper with the Von's-Shopping Bag of Safeway. Actually Safeway, I am not looking at it [fol. 328] maybe as competition at the moment, but my ad might be on the opposite page to that ad. So either way, generally speaking there are people that are shopping in that area and if they are going to do any traveling they are comparing these ads.

Q. Generally speaking, based on your study of the industry what is the draw area of the average grocery store such as yours?

A. I would say that your bulk of draw should be within your mile radius or so, a mile and a half.

Q. You mentioned a new Von's Store on Fair Oaks Avenue in South Pasadena and you have mentioned this Shopping Bag Store in Eagle Rock on Colorado Boulevard.

A. There are two, three, I believe. One at the corner of Eagle Rock and Colorado and then I believe they have one up the hill on Colorado closer to Figueroa. Where Figueroa used to end.

Q. How far would that second Shopping Bag Store be from your store?

A. It must be two miles or so. I have never actually laid it out on the map.

Q. Do you know when this first Shopping Bag Store that you referred to on Colorado Boulevard, which you estimate is about a mile and a half from your store, was built?

[fol. 329] A. No, I do not.

Q. It is a fairly old store, is it not?

A. The first one is fairly old, yes.

Q. Do you know when the second one that you referred to, which is farther away, was built?

A. I can remember that had a grand opening, but time escapes me. I would say it must have been in the early fifties, I would say.

Q. What other stores are there in this general trading area that you refer to as the trading area of your store?

A. Well, there is a Boy's Market and a Kory's Market. They are the closest markets to us.

Q. How far away is the Boy's Market?

A. The Boy's Market is about five or six blocks away.

Q. In which direction?

A. Going south, southwest. And the Kory's Market would be about two or three long blocks to the north. And then there is also a Safeway Market possibly four blocks to the north.

Q. That is a block farther north than Kory's?

A. You would go to the corner where Kory's is located, that being York, and then turn left to York. Now, it is about two blocks down York.

Q. Any other stores in this general area?

[fols. 330-331] A. Yes. One that has been an influence on our business has been the new Shoppers Market built at Avenue 45. That is 15 blocks away.

Q. Shoppers?

A. Shoppers.

Q. Avenue 55?

A. 45.

Q. Across the street from that there used to be a Ralphs Market which I think was taken over by Fox; isn't that right?

A. You are getting into older history now. That is further down the street. That was a Ralphs and it passed hands rapidly through two or three ownerships, I think. The old Kory and Better Foods had their hands on it and it went to another one, another one. It has not been a very good market I have been told.

Q. Didn't Fox wind up with it about 1960?

A. It could have been. If he did, though, it really wasn't

classified as one of the stronger Foxes or the weaker Foxes, you might say.

Q. Any others that you can think of in this general area?

A. Not in the general area I am referring to now. You would have to go out a little further. I would say that is the competition I can think of.

[fol. 332] Q. You referred to the Von's and the Safeway up at Fair Oaks Avenue at the Pasadena Freeway turnoff. Going down Mission Avenue toward Figueroa near your store there are a number of markets, aren't there?

A. There are quite a few smaller markets in there. I am not familiar with their names.

Talking about Mission, there is one that is in my area I do go to. I believe they refer to that as the Mission Market. It is just in the middle of the two areas on Mission. And further up the street there is another very small market, the name I do not know, and they are located there. Then you get into South Pasadena and then there is the Pantry, of course.

Q. Going over to this Colorado Boulevard area in Eagle Rock, where you refer to the two Shopping Bag Markets, are there other markets in that area?

A. Yes. There is a market, I am not familiar with the name, it seems like it might be Community Market. It is across the street from the older of the two Shopping Bags. And stores of smaller capacity, let's say, are in that area. I don't know them. Yosemite Market, I have met that gentleman. He has one down on Yosemite. That's all I can think of.

Q. How old a store is this Boy's Market which you refer to as being five or six blocks away?

[fol. 333] A. That is an old store. It has been in its location before I was—we were located at Avenue 60.

Q. How about Kory's?

A. That was an old Better Foods Market and possibly 10 years ago or 8 years ago it was turned into a Kory's Market. They broke that chain up. It was a family arrangement and several took one group of stores and some of the family took another group of stores and they changed the name at that time. When we were operating at Avenue

60 for quite some time that was a Better Foods and then they changed to Kory's and remodeled it.

Q. How about this Safeway Store you referred to?

A. That is a new one. That is in the last four years or five years.

Q. You named the new Shoppers Market. When was that built?

A. That is about the last three years.

Q. And this former Ralphs and Better Foods and Fox Market?

A. That is an old one.

Q. That is a real old one.

A. Yes. I don't know where that one went back to but that is a real old one.

Q. Can you think of any other stores, other than the Safeway and the Shoppers, which have been built in your [fol. 334] general area since 1950?

A. One comes to my mind now but it is not a large chain, it is an independent. I think they refer to it as Capitol Market. It's at the corner of Monterey and Huntington. Supposingly it is competition to us too.

Q. When was that—

A. That has been built in about the last three years. There have been quite a few little stores that have closed.

Q. That is what I was going to ask you. Which ones in your area?

A. Well, several of the smaller Safeways, and there was one around the corner. Names I can't give you on these markets. I don't even know if they classify them as names. They were just markets. One across the street from the church on Monte Vista, another smaller one—

Q. What kind of a store was that?

A. A grocery store of general sales, just carrying most merchandise, meats, groceries, dry groceries and produce.

Q. How large?

A. Oh, it wasn't a large store. It was a store of possibly one-third our size I would say.

Another market which is about three blocks from us on Monterey Road, the Kolar Brothers, they have closed. That was a store of about close to half our size. The store down on Avenue 54 on the corner was a small store, and [fol. 335] they have closed. Not far from there there was

an old Safeway, and they have closed. And another small Safeway up on Avenue, that must have been about Avenue 63, they have closed. Maybe lesser ones I can't recall right in my area, but they were there and are no longer there.

Q. You said that several Safeway Stores, the smaller ones, in your area have closed. These are just the two that you have referred to or are there others?

A. I will go further. There was one further down—now you are on York—down at Avenue 50, they turned that one into a roller rink. That was a Safeway.

And actually going back some distance there was a store, a small independent, about two blocks up from that Safeway that has just been turned into shops. I can remember when there was a store there, a grocery store, a small one.

Mr. Hughes: Just turned into what?

The Witness: Shops, general shops.

Mr. Hughes: Not a grocery store.

The Witness: Shoe shop, clothing.

Mr. Alsop: Q. When was this that that one closed and turned into shops?

A. I would have to go back possibly ten-fifteen years, in that general area. I wouldn't even know. Some of them are missing. I know there is a store and I am driving by one day and I say, "What happened to that store? Gone."

[fol. 336] Q. You referred to this small store on Monte Vista which is about a third the size of your store that closed. Do you recall when that was?

A. That has to be over ten years ago, twelve years ago.

Q. How about this one of Kolar Brothers?

A. That one closed about five years ago. I take that back. Kolar Brothers sold it about six years ago and it actually closed down completely about two years ago. The owner of that store turned out to be my manager for about a year or two and I was familiar with the store.

Q. Then this store on Avenue 54, as you recall—

A. That is going back ten years, at least.

Q. This small independent which was near the Safeway which has been turned into some shops?

A. That has been at least ten years ago.

Q. You can't think of any other stores in this area which have opened in the last ten years?

A. Other than the ones that I have mentioned?

Q. Other than the ones that you have mentioned.

A. No.

Q. This study that you have made, this continued study of grocery conditions in this area, has that been pretty largely confined to your own immediate area where your store is located?

A. I would say that. Making a study, I might clarify [fol. 337] that, is things that I have observed in my own area and reading of different magazines that are in the industry. I travel as anybody does, to this part of town, the next part of town.

Q. Have you read of how many grocery stores A & P used to have across the nation?

A. I have seen articles on that. I understand they are the largest chain in the world, A & P.

Q. Have you read that they once had over 15,000 stores and now they have only about 4,000?

A. I have seen that. 4,000 seems like a staggering figure to me. Fifteen I can't even think about.

Q. There has been a change in marketing conditions brought about by the supermarket which has resulted in the decline in some of the small stores, both of the chains and the single store operators; isn't that right?

A. I would say that the chain in the grocery industry has brought about maybe larger and bigger stores in areas, it's true.

Q. There are changes everywhere else. We don't have any blacksmiths any more, do we?

A. That's right.

Q. You don't see many horse and buggies these days.

A. No. Across the street, one block up, we had one of the last blacksmiths. He was there for many, many years.

[fol. 338] Q. There have been other changes in grocery retailing in the time that you have been familiar with it, such as better refrigeration?

A. True.

Q. And better packaging?

A. Right.

Q. Better equipment?

A. True.

Q. These are things which the public has demanded and the industry has brought about; isn't that right?

A. That's true.

Q. In your driving around this area can you think of any area at all in the Los Angeles metropolitan area where the housewife doesn't have a wide choice of different stores from which to choose to buy her groceries?

A. No. Generally speaking I would say the housewife has several stores to choose from in any area that she is in.

Q. And that would include stores of the chains, both large and small, and single store operators; isn't that right?

A. I would say yes.

Q. More recently there have been other changes in marketing conditions, have there not, such as the entry into this area of the discount houses selling food?

A. That's true.

[fol. 339] Q. What have you read about that, or what do you know about that situation?

A. Well, now we are getting to what I have read. I do not have a discount store that is actually competition with me in my immediate area. I think the closest one now is in Alhambra, where a Unimart has been opened.

Never being in that type of business it is a little different type of business. It seems that they banded together many stores, many different type of retail stores with a nucleus around a grocery store.

Q. All under one roof.

A. All under one roof. Which, using the term "discount," offering a lower price, made some of them successful, it seems.

Q. And this is a development of the last three years in this area, isn't it?

A. I would say so, in this area.

Q. In your reading have you read that various prognostications by so-called experts in the grocery business are that the discount houses would put the supermarkets out of business?

A. I have read both sides, pro and con.

Q. Yes. Have you seen the development or read about the development in recent years of the bantam stores doing [fol. 340] business in this area?

A. Well, yes. I think what you would be referring to is the—well, many of the larger type of stores have changed their tactics in issuing more stores of maybe a smaller nature in, let's say, area size, referring to them as bantam type stores. And I have seen that. Actually I have read more of it than I have seen it.

Q. You have read about the Tiny Tim Markets down in Orange County?

A. I am not familiar with them.

Q. Speedee Mart operations?

A. I have heard of that one.

Q. Do you know how many of them there are in this area?

A. Not in this area, no, I don't. I have no idea.

Q. You have referred to certain stores which have come into your area and certain stores of Safeway and others which have closed in your area over the last ten or fifteen years. Over the last ten or fifteen years have you read or heard of people entering the business for the first time, prospering and succeeding?

A. I couldn't tell you who. It must be so. I feel there must be people.

Q. Do you know Joe Hughes?

A. Yes, there is Joe Hughes. Actually I didn't know [fol. 341] how long ago Joe Hughes had his stores. I know he had stores and has grown.

In that area, which is closer to the beach, or going in that direction, there has been stores which have opened that I had never seen the name before at all. I would even say Food Giant.

Let's take Food Giant, for example. One day I never heard the word and the next day they were everywhere.

Q. That was true of Fox, too, wasn't it?

A. That was true of Fox. Of course, that went up and straight down.

Q. Fox started out about 1954 and built a large chain and then went into bankruptcy, didn't he?

A. Yes.

Q. You have read about that?

A. That was quite an operation. I read that story.

Q. Did you read that he expanded too rapidly with inadequate capitalization and got into financial difficulties?

A. Yes, that seemed to be the general trend. He was going too fast without enough management, careful management, and not enough money, or somewhere along the line it just didn't jell.

Q. Did you hear the same thing about McDaniel's?

A. I have heard that about McDaniel's.

Q. How about Yor-Way?

[fol. 342] A. Well, I think, watching the Yor-Way—I have studied the Yor-Way a little more. I think Yor-Way's trouble was just bad management. They had some nice stores that died on them and I couldn't understand why.

Q. That was a fairly large chain but it went under because of bad management.

A. I would think so. At least it appeared from the outside to me that that was their main problem. The Pantry is fairly new that has grown quite rapidly.

Q. Are you acquainted with Ted Wood of the Pantry Market?

A. I have met him. Ted Wood built his first store right after we remodeled our store.

Q. When was that, about 1954?

A. '54-'55, somewhere in that area. If you will look at the Pantry Stores they use many features that we put into that store. They were very new at the time. Marlite walls, new type check stands that were very new at that time.

Q. You have heard that is a very successful operation?

A. I have heard that but it surprises me.

Q. He has about ten stores now?

A. That's about right.

Q. In your study of the industry, or reading, have you read at all about Joe Goodnight of Michael's Markets?

A. No, I do not know that.

[fol. 343] Q. Have you read or heard about Yosh Inadomi?

A. No, I do not know that person.

Q. Or Jerry Fleishman?

A. I don't know that operation.

Q. Are you familiar with the Shoppers Market operation?

A. Yes, I know of that operation.

Q. Back when you started in '48 that was just a one-store operation, wasn't it?

A. Stating that date I am not sure of that. What I knew of the Shoppers was that they were located strongly in the beach at that time, I mean as they grew. I was very surprised when I saw them come into our area. I thought they were going out of their own area completely when they came up to Highland Park.

Q. Would it surprise you to know that their first store was in Brooklyn Heights?

A. That I didn't know.

Q. You referred to the bad management of Yor-Way. That started going downhill rapidly after the death of Jack Kennedy, the president, didn't it?

A. I couldn't tell you that. I don't know.

Q. You felt their management was weak, however?

A. I felt that way.

Q. Have you made any study of the management setup [fol. 344] that Shopping Bag had back in 1959, 1960?

A. No, I cannot say that.

Q. You can't say whether it was strong or weak?

A. It seemed strong to me.

Q. It seemed strong to you?

A. They grew, they had very nice stores, smart looking stores. I knew several of the personnel in the stores that were acquaintances of mine. In talking to them at luncheons or dinners they always bragged up Shopping Bag's end of the table.

Q. Yor-Way had good looking stores, too, didn't they?

A. They weren't quite in the class with Shopping Bag Stores, in my opinion.

Q. Shopping Bag had a lot of bad stores and old stores as well as a number of new ones and bigger ones, did it not?

A. I would say every chain has to have bad stores.

Q. Would you say that these new forms of competition, the discount houses and the bantam stores, have brought increased competition in the grocery business in this area in recent years?

A. I would say yes. Not being in my district I am just assuming they must.

Q. You try to keep generally familiar with marketing

conditions throughout the Los Angeles and Orange County areas, don't you?

[fol. 345] A. I do. I read what is going on. I try to keep abreast of what is happening.

Q. Based on that reading you would say in the last three years the discount houses and the other new forms of competition have increased competition in your business, would you not?

A. I would say yes.

Q. In Paragraph 7 of your statement, Mr. Dick, it states that you would testify you purchased from Certified and this enables you to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products; is that correct?

A. That's true.

Q. As a member of Certified you are one of the owners, are you not?

A. Yes.

Q. Certified operates large warehouses?

A. Two large warehouses.

Q. Their warehouses are serviced directly by railroad shippers?

A. Yes.

Q. And Certified operates large trucking facilities, does it not?

A. It does.

Q. It buys in heavy volume directly from the producer?  
[fol. 346] A. Yes.

Q. As an experienced grocer, Mr. Dick, running a single store, do you feel that you have better control over your inventory than the store manager of a large chain?

A. I would say no more advantage. You are referring to a manager now of a larger chain market.

Q. Yes.

A. No. If he is a good manager he should be able to control his stock as well as I do.

Q. Haven't you read in your study of the industry that one of the biggest problems facing the larger chains is the lack of qualified managers and supervisory personnel?

A. There is always that, both sides.

Q. You have read that?

A. Yes, I have.

Q. Isn't it true that one of the fiercest forms of competition in the grocery business in this area is the raiding of good employees from other concerns?

A. You have to clarify that for me. I don't quite follow that.

Q. You have seen reports of top executives of Von's being hired away by Food Giant or other concerns, haven't you?

A. No. This may take place but I think it's more of an incentive of the individual that would make a change [fol. 347] that is usually being offered something. I don't think that is an out-and-out practice. At least I don't know.

Q. This Paragraph 7 states that you would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives. Are you referring there to Certified Grocers of Orange Empire?

A. No. I am referring more to a large chain that is in co-ops of, let's say, dairies, which are the strongest.

Q. Later on in your Paragraph 7 you say, in addition some of the chains, such as Von's and Shopping Bag, belong to a dairy co-op. But if you would look at your Paragraph 7 at the top of Page 4, as I read it, you are referring to a different type of co-op there, are you not?

A. Well, let's read it.

Q. The sentence I refer to is: "However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems."

A. Well, now taking this statement as I put it in 7 here, we are referring to the likes of, say, Certified, which I am familiar with, more so than Orange. Stating that they have decreased their purchases would mean it has appeared to me that the larger the chain would get it would behoove them to buy a little more directly than they would from Certified.

[fol. 348] There are advantages at times in buying directly. It would take their own warehousing and their own setup, something that I could never accomplish. I don't have the room for it.

Q. But you were there referring to Certified in that sentence?

A. In that sentence it appears that that is what I would say, yes.

Q. You say on occasion it would be beneficial for such a concern to buy directly rather than through Certified?

A. At times, yes.

Q. Now Von's is not a member of Certified, is it?

A. No. Well, there again there are so many down there. I have seen Shopping Bag trucks and Von's down there. I assume that they are in a cooperative of some sort of that nature.

Q. You assume that but you have no knowledge?

A. I have no knowledge.

Q. How about Safeway?

A. They are definitely not, I know that.

Q. How about Ralphs?

A. They are definitely not, I know that.

Q. You say these concerns that have their own warehouses sometimes have an advantage by buying directly and storing it in their own warehouse. Have you made [fol. 349] any study of the relative benefits of such procedure compared to the cost of owning and operating your own warehouse?

A. No. I have never made a comparison because I have never owned a warehouse. Let me put it that way. I could only state it from the side that better buys can be made if you are going to make them direct, at times.

Q. At times?

A. Yes, at times. I am not saying that every last item in your store can be bought better direct. It is not true. There are too many small items involved.

Q. Certified has certainly as great a buying power as any chain in the area, has it not?

A. I would think so.

Q. You know that they buy more than any chain in this area, don't you?

A. I would say yes. Possibly with the exception of maybe Safeway. That is a pretty big outfit.

Q. Certified Grocers is known as the largest retailer owned cooperative buying organization in the world, is it not?

A. I have read that. Orange doesn't want to admit that but I have read that.

Q. Orange must be running a close second, I guess.

A. If you read their brochures they seem to be closing the gap fast.

[fol. 350] Q. Where do you buy your milk?

A. We buy milk from three outlets wholesale, Carnation, Challenge and Knudsen.

Q. Changing the subject just a moment and talking about new forms of competition, have you had any of these milk depots open up in your trading area?

A. Yes, one.

Q. How many?

A. One.

Q. Where is that?

A. It is at the corner of Avenue 63, I believe it is, and Figueroa. You are referring to just plain milk outlets, drive in milk?

Q. Yes.

A. Yes.

Q. And some of them sell potato chips, bread and weiners?

A. That's right.

Q. Does this one in your area?

A. I have noticed them selling bread and chips and juice. I don't know if they have gone any further than that.

Q. And they can sell their milk cheaper than you can?

A. That is what has been said.

Q. They are permitted to by state law, are they not?

[fol. 351] A. That is what I understand.

Q. The price at which you sell your milk is fixed by state law?

A. That's right.

Q. And the price at which Von's can sell its milk, whether it be Jerseymaid or anything else, is fixed by state law?

A. I understand that is true.

Q. Have you read in the various trade papers the serious complaints by the grocers in general about the ability of these milk depots to sell milk cheaper and diverting business from the supermarkets?

A. Yes.

Q. Has that been your experience with respect to this milk depot in your area?

A. I have not heard that. But looking at it from a practical side I would say it is a problem. Milk is a very large

item. If a housewife can buy it cheaper at an outlet she would probably take advantage of it at times. It doesn't have the convenience of a market, let's face it, but it does have that advantage.

Q. And this is a new form of competition that has appeared in the industry in the last three or four years?

A. Modernized, yes. But I can remember some of those a long time ago.

[fol. 352] Q. Have you read that they seem to be springing up all over the area?

A. In their modern form, yes. In other words, they are running on a corner now where it used to be that you had to drive to them. I think out in the areas of Anaheim and areas like that they used to have large milk outlets that you could drive into, and that has been quite a few years ago. But in their modern form you will see them, they are beginning to spring up on little corners with a very inexpensive building structure.

Q. In this same period have you noticed that more and more liquor stores are selling an increased line of grocery products?

A. Yes, that's true.

Q. Bread and delicatessen items, milk and potato chips and other items?

A. That has been a trend with liquor stores, that is true.

Q. Has it occurred in your area?

A. I would say, yes, it has. A liquor store used to be a liquor store, we own one, and sold only liquor in it. But a unit of a liquor store by itself handles very small amounts of items that more or less complement the liquor. They are there for the liquor. The idea is to get them in there.

[fol. 353] Q. I have been told that some of these liquor stores sell more bread than some grocery stores. Do you have any opinion on that?

A. I doubt that. I have an aunt that has a little liquor store that she has converted into a little grocery store and I would have to admit her backbone of that store is still liquor.

Q. In this same period have you noticed drugstores are selling more and more grocery products besides liquor?

A. Not in my area. I have never come across that. I notice they will handle some items, soap for instance.

Q. Paper goods?

A. Paper goods is a strong item.

Q. Health and beauty items?

A. Yes. But there is the old argument. The drugstores have been screaming for many years that the grocery stores really took the thunder away from them when they put drugs in the store. I remember that.

Q. It is a constantly changing picture; isn't that correct?

A. That's right. At one time a grocery store probably had five or six feet of drugs in their store and now a well-run grocery store of any size must have 20 or 30 feet of drugs, or should have 20 or 30 feet of drugs, beauty aids and things of that nature.

[fol. 354] Q. How many feet do you have in your store?

A. I have two complete sides of gondolas, not including side racks that have drugs on them. Possibly 20, 25 feet tied up in beauty aids-drugs.

Q. You stated that you sell Carnation, Challenge and Knudsen milk in your store.

A. That's correct.

Q. All of these are well-advertised and well-known brands of milk?

A. That is true.

Q. In your opinion does any one of these brands have a less public acceptance than Jerseymaid milk?

A. Any one of these companies have a less public acceptance than Jerseymaid?

Q. Yes.

A. I don't think so.

Q. Generally you would say, would you not, that Carnation products are much better advertised than Jerseymaid?

A. I would say so.

Q. Would you say the same as to Challenge?

A. True.

Q. And as to Knudsen?

A. True.

Q. Where do you buy your meat, Mr. Carpenter? You don't run the meat department. I am sorry.

[fol. 355] You are not familiar with that meat operation?

A. No, I am not.

Q. Where do you buy your produce?

A. Produce is bought—Well, I will simplify that. I buy

it—Give me a moment. Bisbano Brothers, they do the buying for me.

Q. They are brokers?

A. No. It is a small delivery type of service that has several stores that buy for us. We gave them the power to go down to the market and make our purchases for us.

Q. Some of the single store operators go down to the produce market themselves but have to get up awfully early in the morning.

A. That complicates the day.

Q. From my personal observation of your store I would get the impression that you feature quality produce.

A. We try to.

Q. Do you have any idea whether you get comparable quality at a comparable price in produce to that of any of the chains?

A. Yes, I feel that is so to a point.

Q. Would you explain?

A. Well, knowing the produce business, or that end of it, my own study, and I have been down there many times, produce is unlike dry groceries in this respect, that a unit [fol. 356] like mine would walk into a broker at the produce hards and ask to buy tomatoes. They are usually quoting a price. The price, let's say—we will use fictitious figures just to bring my point across—the price might be four and a half a lug. We get into the question of how many lugs I want. I would possibly say I need ten. They are four and a half. The next question would be, "Can you use anything like this on an ad?" which would constitute me moving quite a few more tomatoes.

I would say, "Yes, I probably could. What is your price now if I took, let's say, 50?"

Now the price changes. It is no secret to anybody. Now they are four and quarter or maybe even less.

If somebody can walk in and say, "I will take all your tomatoes, what are you asking for them?"

"Four and a half."

"I will take them all but not at that price."

The conversation usually runs after that, "Well, how about \$4, how does that sound to you?" The broker himself is not going to have to handle them in dribbles, he is going to get rid of the whole thing right now. And that is quite a thing in the produce end of it. You go from one

broker house to the next broker house, maybe with the exception of bananas which are pretty firm in price, but you can go from all types of produce and find that's true. [fol. 357] The more you can buy of it generally the better off you are in price.

Q. I have been told by some single store operators that they can go down to the market and wait for the price break and get a much better price than the chains who buy in quantity and early. Have you had that experience?

A. No, I have never had that experience. But now you are talking of a different type of operation. You are almost referring to a Grand Central Market type of an operation. You are waiting and gambling at the last minute to see that there is a break and running the risk of not having a main produce item.

Let us say you are going to wait until the last minute to buy lettuce, which is a strong item in your produce department. If you wait too long you may find out there is no lettuce.

Q. And you may find out there is a small quantity which you can pick up at a real bargain; isn't that true?

A. That is true. If you wait it out long enough and you want to run that gamble, you could pick up a buy. I don't think there are many operating that way. We wish to, or most markets wish to show a complete produce market fairly early in the morning without waiting it out until the last minute.

Q. Judging from the quantity of produce you had in your store, I think I was in about 3:00 o'clock one Tuesday, [fol. 358] you do quite a produce business, don't you?

A. It moves fairly well. Yes, it's a good department for us.

Q. What other services does Certified render for its members other than enabling them to get these quantity discounts?

A. Well, they have a small service type program for merchandising some of their products, but you pay for that. In other words, if you bring in—I am referring now to drugs and hardware. You can also buy their service program. I believe it is five or six per cent. I think there is talk of it being changed to six. Their men will come in and service and order for those departments. You can pay for that if you wish.

Q. They have men who are experts in advertising and layout who will lend their assistance to their members, have they not?

A. No. They may actually have men in their group but they don't have advertising men. If they have them I have yet to meet them.

Q. Are you able to get, as a member of Certified, insurance at a better rate than you would otherwise get?

A. Group insurance? Yes, I would say so. I have never tried to buy it any other way but there is group insurance on Certified, open to my employees also.

[fol. 359] Q. Recently Certified has put in a very modern electronic data processing system, has it not?

A. Yes, they have.

Q. What is the purpose of that?

A. To speed their orders, possibly cut down their help. It is a type of automation trend. Most markets are trying to go to it.

Q. And recently Certified has formed an equipment firm to assist its members in financing the purchase of equipment and facilities?

A. Yes. That is very new. I know very little about that. That brochure and news bulletin is only a month old.

Q. Certified has a coffee roasting plant, also, has it not?

A. Yes, it has.

Q. And a bean processing plant?

A. Yes, it has.

Q. And a line of what are called not nationally advertised brands, but what is the word I am thinking of?

A. You are referring to private label.

Q. Private label?

A. They have. Springfield is the name of the private label.

Q. That would include bread more recently; isn't that right?

[fol. 360] A. No, they do not have the bread, by the way. They are allowing a bakery to use their name of Springfield. Actually they are bending a point very strongly when they say that is Certified bread.

Q. But does this allow the member of Certified to get the bread, this Springfield bread, at a slightly better price?

A. Not in my opinion.

Q. Recently Certified decided to go into the ice cream business?

A. That is very new, that is very true, in the last month.

Q. If you will turn to Paragraph 8, Mr. Dick, you refer there to market shares.

A. Yes.

Q. I am going to ask you to look at a document which has heretofore been identified as Fairbank Exhibit 1. Is this the defendants' exhibit which you were shown and which you state in Paragraph 8 you are in agreement with?

A. Well, I am going to have to use this now. It has been some time since I have been shown the documents that were shown to me at the time. It could be one similar, one like it. Actually I don't even remember it being in a graph. I think it was more or less—They asked me to look at the figures and asked if that was my general opinion [fol. 361] ion of trends of larger stores getting bigger shares, and which is my honest opinion. I feel that is so.

Q. The larger chains are getting bigger shares of the market?

A. Well, let's put it this way. In reading from this, like eight largest chains in the area increased from 33 to 39 percent. Watching the stores as they grow and expand, I would say that must be so I mean in my opinion it must be so.

Q. Would you look at the top 3 at the bottom of the chart?

A. Now we are looking at this chart here. Okay.

Who would be the top 3, Ralphs, Safeway and Von's Shopping Bag?

Q. What happened to the market share of the top 3?

A. As I say, at least I don't recall this graph.

Q. I will show you a document which has been marked Craun Exhibit No. 1 for identification and ask if that is the document you recall.

A. I cannot say. I am speaking honestly, I cannot say that this is the document. I really can't.

Mr. Alsup: Mr. Hughes and Mr. Knight, can you refresh the recollection of the witness in this respect?

Mr. Hughes: Yes, we can.

Mr. Dick, when I saw you in December '62 this [fol. 362] exhibit, which is identified as Fairbank No. 1,

is one among those which we went over and talked about at the time and is the basis for this particular statement in Paragraph 8.

The Witness: Mr. Hughes, I will put it this way now. I am only going by memory now. I was asked these questions very openly on the spot quite some time ago.

What I am stating here, even as I have read this over, it seems true to me, how true I cannot say, but it seems true to me that they are talking about larger chains, like they are saying—Let's not talk about top 3. I don't know who the top 3 would be.

Mr. Alsup: Q. You don't know who the top 8 are, do you?

A. I am only generalizing them. I can name them but I can't put them in their order. Undoubtedly Safeway has to be one of those in the top 3. And in my opinion, certainly Ralphs must be strongly in that group. Possibly Alpha Beta is very strong in that group. But now you are going down the line, you are talking about Von's-Shop-ping Bag arrangement, Food Giant arrangement, Hughes has gotten very strong I understand, and Thriftmart must be very strong in there. But I did not go into the point of identifying who was who.

Q. I suppose you were pretty rushed trying to conduct your business when you had this statement before you.

A. I am not taking—When these statements were asked [fol. 363] or shown to me, and I did not break them down and say that I know whose financial statement is what and where they belong. I don't. I don't know to this date exactly.

Q. But if you accept the figures on the chart as consistent with your own study of the industry would you agree, based on that similar study of the industry, that the market share of the top 5 decline between the years 1952 and 1960?

A. This chart shows it as that.

Q. Wouldn't that be consistent with your study of the industry?

A. Well, I would have to make a statement here. Frankly speaking I would say this may be true in this respect. that each year you are talking about share now of the market. Each year the population increases here so much

that the share is so much larger that they may be getting less of the share. Actually the stores themselves are getting bigger and bigger, in my opinion.

Q. But it is consistent with your study of the market that because of the increased population and the greater total sales the share of that total enjoyed by the top 3, the top 4 and the top 5 have declined in the period 1952 to 1960; isn't that correct?

A. I won't argue. It might be very true. I don't know how true it is but I won't argue the point.

[fol. 364] Q. When you started in the retail business in this area, Mr. Dick, Safeway was generally reputed to have a very large share of the market, was it not?

A. I would say yes.

Q. And from your own knowledge of the industry you know that share has declined substantially over the years that you have been in business.

A. There again in the same phrasing I used before, "their share," yes. Their size, no.

Q. Their market share has declined substantially?

A. Yes.

Q. You mentioned Hughes being in the top 8 or 9 in your opinion. Now, Hughes wasn't even in existence in 1950, was it?

A. If he was he was unknown to me.

Q. And based on your study of the industry you would agree that the top 20 in 1960 might be substantially different than the identity of the firms that constituted the top 20 in 1950, would you not?

A. That is possible. Not greatly reduced. I would say if you were going back to the year of '50 now, as this graph goes, up to your present time, '62, it has changed, yes. Basically there are still some in that group that have remained strong, but there have been many chains grow very rapidly in that period.

[fol. 365] Q. And some have entered the market since 1950 and grown strong?

A. That is true.

Q. You mentioned Hughes?

A. Hughes. Possibly Food Giant.

Q. And Fox was certainly in the top group in 1958, before they went into bankruptcy, wasn't it?

A. He must have been somewhere in there. Thirty some units I think he had.

Q. And McDaniel's?

A. McDaniel's unit I am not too familiar with. I don't know how many units they had. I think they grew to about 20 units before they collapsed.

Q. 20 or 24. You state in Paragraph 12, Mr. Dick, that you would testify you face very vigorous competition from Von's.

A. Well, I face vigorous competition from Von's and many others too. It is stating here, as it states it flat, I do have strong competition from Von's. Not competition in the direct sense that they are across the street from me, but in the fact that Von's, and I will add other stores also, do constitute a competitive type of business that I must fall in line with at all times if I wish to survive. Pricing is a very strong factor.

Q. You haven't seen any lessening in that competition [fol. 366] since the Von's merger with Shopping Bag, have you?

A. I wouldn't think so.

Q. It has been more vigorous, if anything, has it not?

A. It has to be, yes. This is a trend.

Q. In Paragraph 10 it states that you would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area. My question to you is: Are those the "major chains" which you refer to in the third line of Paragraph 14?

A. Well, I would state it as this, the mergers of chains, like the merger of a Shopping Bag and a Von's, if this had not been so would probably be the names that I would be rattling off like Ralphs, Market Basket, Thriftmart and Alpha Beta. I have no idea that Von's and Shopping Bag even knew one another, I mean as far as getting together. Now, merging of chains like Ralphs, Safeway, Market Basket, Thriftmart and Alpha Beta, it is possible that there will be mergers if mergers are allowed to continue. I feel strongly that it will happen. I think that the time will come that stores like Market Basket might need the help of a Thriftmart, or vice versa, and they will merge if time continues to allow mergers to go on. This is my honest opinion.

I have heard talk of other mergers. I have heard talk of mergers of Food Giant and Boy's. I have heard this [fol. 367] many times. They say Boy's and Food Giant were going to go together. In fact, even some of their personnel changed places, the Goldsteins. One went from Boy's to Food Giant. It could be possible in such an operation. I am not saying it is going to happen. I didn't realize it would ever happen between Von's and Shopping Bag, practically speaking. But I say the trend could be that if mergers were to go on, because speaking as an individual it would seem that I would try to be looking out for myself, which is true, and I am in situations similar to this. But the day may come that some of these giants in the business, we refer to them as giants in the business, may want protection from the other giants too. Mergers may become very common if mergers continue.

Q. And here you are speculating, are you not?

A. I am speculating. I am not speculating on the fact that there has already been a merger between Von's and Shopping Bag.

Q. I would agree with that.

A. That seems to be a fact.

Q. That is a fact. You refer to rumors about Boy's and Food Giant.

A. Yes.

Q. You said in fact one of the Goldstein boys went over and became an executive of Food Giant.

A. That is true. I can elaborate that a little bit if you [fol. 368] wish. That was Al Goldstein.

Q. Let me ask you another question. That was Al Goldstein.

Mr. Knight: Was there something more you wanted to add?

The Witness: I was just going to bring up the point about the Goldsteins in Food Giant.

Mr. Alsup: Q. I want to ask you a question about Goldstein.

Mr. Knight: Why not finish the answer to the question that was just propounded to you?

Mr. Alsup: Mr. Knight, are you conducting the examination for the government?

Mr. Knight: I don't like to see the witness interrupted.

I do not believe that he answered the question he was asked, sir.

Mr. Alsup: I am assuming that Mr. Knight is conducting the examination for your side.

Q. Do you have anything to add?

Mr. Knight: You subpoenaed these 18 people, I didn't.

Mr. Alsup: Q. Mr. Dick, did you have anything else you wished to add about Al Goldstein?

A. I am just going to say that Al Goldstein at one time was a strong factor in the Boy's outfit. It was then stated that there was possible a merger with Boy's and Food Giant.

[fol. 369] Now I am saying, as I say this is rumor, it is only talk. Next I notice that he is now working in a very strong capacity for Food Giant, which at the time made people think there must be a very strong connection here between the two of them. That may not be so, because apparently Mr. Goldstein is no longer with Food Giant. That is as far as I know.

Q. Yes. You read the trade papers pretty carefully, don't you, Mr. Dick?

A. I watch them.

Q. Did you see in the trade papers that Mr. Goldstein had stated that he didn't like to be an executive in a large chain and he wanted to become a single store operator?

A. I never saw that.

Q. You have no knowledge that he is a single store operator at the present time?

A. Yes, yes, yes. I will go that far. I never saw the statement you are making at all. Frankly I think that Al Goldstein would love to own a hundred stores.

Q. I am sorry, I didn't hear that.

A. I would think that Al Goldstein would love to own a hundred stores. It is true that I have heard that he has a store in Burbank.

Q. A single store operation?

A. Single store. Now we are talking about personal money. That is probably the extent of what he can do at the [fol. 370] moment, I would assume, otherwise he would be a lot bigger than he is.

Q. Do you expect Mr. Goldstein to be successful in this operation and grow?

A. I can't see why he shouldn't.

Q. That store is directly across the street from a Von's Store in Burbank, is it not?

A. I don't even know where the store is at. I just heard that Al Goldstein had taken over a store from somebody in Burbank. That is the extent of my knowledge.

Q. From your continued study of the grocery business, Mr. Dick, would you agree that there are probably more rumors and more hearsay which doesn't come to fruition than almost any other industry you can think of?

A. I don't know of any other industries, but my experience in the Navy would say this is pretty general with any type of business. There are all types of rumors and we hear them all the time.

Q. And many of them not reliable at all.

A. Some of them not reliable.

Q. From your study of the Von's-Shopping Bag organization isn't it true that the Von's Stores prior to the merger were located primarily in the western and southern sections of the Los Angeles metropolitan area?

A. I can't answer that one. I have never seen their [fol. 371] layout. I don't know exactly how they are concentrated.

Q. From your study of Shopping Bag would you be able to testify that they were located primarily in the northern and eastern sections of this area?

A. I would have to answer that the same way, I don't know.

Q. You said it is conceivable to you that Market Basket might need the help of a Thriftmart, for example, and might merge.

A. That is possible.

Q. Have you made any study of the location of the Market Basket Stores in relation to Thriftmart Stores?

A. No, I have not.

Q. If they had the very bulk of their respective stores across the street or in the immediate trading area of one another it wouldn't make much sense to merge, would it?

A. No. Stating it as you say it, it wouldn't seem that way.

Q. When you say there may be other mergers of major chains, and you identified what you considered to be the major chains, this is just the merest possibility based on speculation on your part; isn't that correct?

A. Not merest, no, I wouldn't say that. I have a feeling that this is the type of business that step by step these things will build up. I honestly feel that way. I [fol. 372] feel that if the advantages are shown strong enough, which I think they would be with a merger of a Von's and a Shopping Bag, that others that had not even thought of the idea will seriously take it into thought anyway. If they can acquire some of these advantages, should it be they go this route.

Q. Fox made a number of mergers, didn't they, before they went into bankruptcy?

A. I don't know of their making mergers. I know they acquired stores. Whether they made mergers, I could not say that. I had never seen their setup.

Q. They acquired a large number of stores in a short period of time?

A. Acquired them by assuming them or buying them or taking them in some shape or form. Whether they merged I can't honestly say.

Q. And then they went into bankruptcy.

A. Then they went bankrupt.

Q. Didn't Yor-Way do the same thing?

A. If they acquired anybody as a merger I do not know of it either. I just assumed that they took the stores as they needed them. It was no 40 units going with 40 units; let's put it that way. It might have been that they had 5 and took 1 more and took 1 after that and 1 after that. That is about the way that it appeared to me as the way I saw it.

Q. Are those the number of mergers or acquisitions [fol. 373] and consolidations that have occurred since 1948 that you had in mind in Paragraph 13 of your statement?

A. Well, I am also referring to the consolidations since '48, and mergers, or that seemed like mergers to me. There again, as an individual outside of a picture, it is very difficult to get all the information I would like to have. But just let us take Acme and Alpha Beta for an example. There seems to be some type of consolidation, of exactly what I don't know, but it seems that way.

Q. It seems that way to me too. That occurred after the merger of Von's and Shopping Bag, did it not?

A. I cannot tell you that. There again they are completely out of my area, Alpha Beta.

Q. And Acme wasn't doing business at all in this area before it acquired Alpha Beta, was it?

A. If they were they were of no note to me. I have no notation of Acme being anywhere around. I actually don't know that.

Q. Isn't Acme the third or fourth largest chain in the United States today?

A. Possibly back East somewhere but not out here.

Q. And they came into this area and acquired Alpha Beta; isn't that right?

A. I could not say that, who acquired what.

Q. Have you ever seen any government challenge of that [fol. 374] acquisition?

A. I can't say I have. I am just assuming this on my own, what I have observed.

Q. Among other changes which have occurred in this area in the marketing conditions, Food Fair has entered the area by taking over the remaining 18 Fox Stores in bankruptcy, haven't they?

A. I have saw a notation of that.

Q. You state in Paragraph 14, Mr. Dick, that this merger of Von's and Shopping Bag is a major stride in increasing the market share of the large chains. I ask you how much this merger increased the market share of Von's.

A. The market share? I could not tell you.

Q. Certainly it didn't increase the market share of Safeway or any other large chain.

A. It would not increase the market share?

Q. The merger between Von's and Shopping Bag didn't increase Safeway's market share, did it?

A. Now we are getting back to shares again.

Q. Yes. That is what you refer to in this Paragraph 14.

A. Yes. Let's put it this way. Talking about market share, you are talking about two now being one. And you are using a division of three. Now you are using a division of two. If anything, in a division of two, a share, as I would look upon it, it changes the picture not exactly as

[fol. 375] it appears. It is possible that the market share of Safeway would go down.

Q. And you have no idea how much this increased the market share of Von's?

A. No, no.

Q. And this language then that this is a major stride in increasing the market share means what?

A. Well, let's put it this way. Let's use simple figures. Let us say you have ten giant type stores and they all merge with another, making five mergers. Let us say the share does not change. Let us say there are still X million people to be served in the industry. But the shares, if they all did it, would make them equal again. There would be five equal shares, not ten. It is all depending on if all ten did it. But if three or four did it now the picture changes in shares.

I cannot state actually how shares would be affected other than the fact that the stores themselves become larger, that is if they go into one unit. In expanding population shares up and down are a very difficult thing to say how it would turn out.

Q. Yes. And we have a very rapidly expanding population in this area.

A. We have an expanding population.

Q. Perhaps more so than any other area in the United [fol. 376] States, wouldn't you say?

A. Oh, yes, I would think so. Maybe Florida or some place like that.

Q. You have seen predictions in your various trade publications that this will continue for many years to come, haven't you?

A. Yes. Let us put it this way, Mr. Alsop. I will break it down this way. Let us say there are three stores in my area—

Q. You didn't answer my question.

A. You wish to know if it has increased.

Q. Would you read the question?

(The reporter read the pending question.)

The Witness: Do you want me to make the statement that I was about to make?

Mr. Alsup: Q. If you would like to make it. Would you like to have it read back to pick it up?

A. All right.

(The reporter re-read the pending question.)

The Witness: There are three stores in my area. Let us say the three stores would be one Von's, one Shopping Bag and Dick's Market. We have equal amount of shares in this area, 33-1/3. Talking about shares now is what we are driving at. You keep trying to share part of the traffic. If Shopping Bag and Von's merge, now if you were calling [fol. 377] them Von's-Shopping Bag in one word, as one outfit, they would now have 66-2/3, not 33-1/3.

Mr. Alsup: Q. And that is what you had in mind in this Paragraph 14?

A. In a general sense, yes. They will increase in that manner.

Q. Do you have any idea, Mr. Dick, how many separate grocery concerns there are in the Los Angeles metropolitan area?

A. Many, many hundreds, but I don't know.

Q. Would you say many thousands?

A. Possibly. I don't know that, sir.

Mr. Alsup: I have no further questions.

(A short recess was taken.)

Mr. Hughes: Before we ask any questions of Mr. Dick I would like to have marked for identification a copy of this statement entitled "Testimony of Richard Dick" as Dick Exhibit No. 1. This is the statement to which we have been referring in your examination by Mr. Alsup.

I would also like at this time to introduce and have marked for identification several of the government exhibits which we are including in our motion for summary judgment data. Would you mark these for identification at this time, as Dick No. 2 a document which is entitled "Position of Von's and Shopping Bag among the ten largest grocery [fol. 378] chains in Los Angeles metropolitan area."

(The documents referred to were marked by the notary public as Dick Exhibits No. 1 and 2, respectively, for

identification, photostatic copies of which are attached hereto.)

Mr. Alsup: It is understood that our objections are reserved.

Mr. Coyle: As our objections are reserved to the other things.

Mr. Hughes: I would like to have identified as Dick No. 3 a table entitled "Changes in Concentration in 20 Largest Chains in the Los Angeles Metropolitan Area 1948, 1954 and 1958."

(The table referred to was marked by the notary public as Dick Exhibit No. 3 for identification, a photostatic copy of which is attached hereto.)

Mr. Hughes: I would like to have identified as Dick No. 4 this chart entitled "Concentration in 4, 8, 12, 16 and 20 Largest Grocery Chains in Los Angeles Metropolitan Area before and after Von's-Shopping Bag Merger Based on 1958 Sales, Per Cent of Total Grocery Store Sales."

(The chart referred to was marked by the notary public as Dick Exhibit No. 4 for identification, a photostatic copy [fol. 379] of which is attached hereto.)

Mr. Hughes: I would like to have marked for identification a chart entitled "Los Angeles Metropolitan Area Number of Grocery Stores Versus Population, 1950-1961 (as of January 1)."

(The chart referred to was marked by the notary public as Dick Exhibit No. 5 for identification, a photostatic copy of which is attached hereto.)

Mr. Hughes: I would like to have marked for identification as Dick No. 6 a table entitled "Grocery Store Openings and Closings in the Los Angeles Metropolitan Area For the Calendar Year 1960."

(The table referred to was marked by the notary public as Dick Exhibit No. 6 for identification, a photostatic copy of which is attached hereto.)

Mr. Hughes: I would like to have marked as Dick Exhibit No. 7 for identification a table entitled "Known Acquisitions

by the 20 Largest Grocery Chains of 1958 in the Los Angeles Metropolitan Area during the Period 1949-1958."

(The table referred to was marked by the notary public as Dick Exhibit No. 7 for identification, a photostatic copy of which is attached hereto.)

[fol. 380] Cross-examination.

By Mr. Hughes:

Q. Mr. Dick, I ask you if you recall our conversation in December 1962 when the government obtained this testimony of Richard Dick from you.

A. I remember the incident.

Q. I would like to show you several exhibits and just ask you if you recall having referred to these exhibits at the time of making your statement. These exhibits are identified as Dick No. 2 through 7 and Fairbank No. 1 and 2. Look at all of these, please, and tell us if you can recall having reviewed those at the time.

A. Mr. Hughes, you are asking me if I had seen them? I can answer that it seems I have seen most of these. Whether I studied exactly every one you showed me I cannot say. But some of these are very familiar to me.

Q. In relation to Paragraphs 3 and 8, in particular, of your statement, did you make reference to any of these exhibits?

A. 3 and 8, you say?

Q. Yes, sir.

A. Yes, I remember this No. 3. Yes, I remember making a statement similar to what I was being shown at the time.

Q. Mr. Dick, in your statement, Paragraph 7, at the top of Page 4, you refer to Von's and Shopping Bag. At the [fol. 381] time this statement was made in December 1962 were these chains one?

A. Yes. As I knew they would be one.

Q. To your recollection was Shopping Bag a member of Certified at that time?

A. I cannot answer that one with full knowledge. I thought they were.

Mr. Alsup: Isn't it a fact, Mr. Hughes, Shopping Bag was dissolved and went out of existence in March 1960?

Mr. Hughes: You are asking me, Mr. Alsup?

Q. Did you state in answer to questions of Mr. Alsup that you had seen Von's-Shopping Bag trucks at the Certified warehouse?

A. Yes.

Q. And it would be a safe assumption that the Von's-Shopping Bag chain was a member of Certified?

A. I thought so.

Q. Can non-members buy from Certified?

A. No.

Q. In your experience as a grocery retailer do you believe that customers come to your store to buy milk only and not purchase other groceries?

A. Not milk only, not the general trend of customers, no.

Q. You have testified that to a point you are on an [fol. 382] equal status with the chains in buying produce and you have given some examples, in particular buying produce at the late market, I believe you called it.

A. Yes, we talked about that.

Q. Is this good business to buy produce at the late market?

A. No.

Q. You have given some examples of buying produce in quantity and obtaining discounts.

A. Yes.

Q. You refer to the fact that you can buy more produce on one occasion than you need and run a special on it.

A. That's correct.

Q. How often can you run a special on your produce?

A. Every week.

Q. Would you run a special on all of your produce every week?

A. No. Certain items.

Q. Just a very few items?

A. One or two or three.

Q. You could not take advantage of this quantity discount on many items a week?

A. I never could.

Q. You refer to some extra services that Certified rendered its members. Are these free services?

[fol. 383] A. Some yes, some no. If you will define the service that you might be speaking of. If it's service in the form of merchandising for you, you pay for that.

Q. What do you pay for this having a Certified buyer take care of your stock?

A. Well, in referring now to drugs and hardware, that is usually a one man operation in your store, both buying and merchandising, working out of an office in Certified. Now, you pay for that. That is a percentage. It could be five—I am almost certain it is five right now. There has been talk of an increase in that service.

Q. And that five per cent subtracts from your over-all profit in the end?

A. Oh, yes.

Q. I refer you to Fairbank No. 1, which you have before you, and I ask you if you note a sharp decline in sales through all chain groupings in the year 1959.

A. Yes.

Q. Can you recall any particular reason why the sales should have dropped that year?

A. Yes, I would say so. That was the year, if I am not mistaken, of the strike. And all chains in the area were without sales of any sort for 30 days.

Q. How would that affect their sales for that year?

A. If they were totalling their sales for that year [fol. 384] undoubtedly it would show less volume of sales for one year.

Q. How would that affect the sales of the independents for that year?

A. Undoubtedly our own, that is my best year by far. We remained open during that strike.

Q. In your experience do you believe that you have retained some of the customers that you picked up during that strike?

A. Oh, some, not many. I would say some have remained from that strike.

Q. Do you believe that the chain stores would have regained these customers?

A. Oh, most of them, yes.

Q. How long a period do you think this might take?

A. Oh, judging from my own sales, we had one or two very good months following the very terrific month of January. That was the month of the strike. Our sales didn't stop the next day. We maintained quite a bit of that volume for two or three months and in fact even possibly longer, until it finally settled down to a leveling off period again. Possibly later in the year.

Q. Referring again to Fairbank Exhibit No. 1, reference was made to the top 20 chains in 1962. For the record, will you state the last year mentioned in Fairbank Exhibit No. 1?

A. I didn't quite understand you. What was that [fol. 385] again?

Q. Would you state the last year—

Mr. Alsup: Can't we stipulate that it shows 1960, Mr. Hughes, and save time?

Mr. Hughes: Okay. He was just testifying to 1962 at one time.

Mr. Coyle: Can we stipulate that this exhibit doesn't refer to 1962 and that he used 1962 in referring to it that it was inadvertent?

Mr. Alsup: Certainly. If he used '62 in referring to this exhibit. I think there were some questions about 1962, because after 1960 we lost Yor-Way, Fox and McDaniel's; isn't that right, Mr. Dick?

The Witness: After which date?

Mr. Alsup: After 1960.

The Witness: I would say after 1960 those were lost.

Mr. Hughes: That is all, Mr. Alsup.

Redirect examination.

By Mr. Alsup:

Q. Referring to that Fairbank Exhibit No. 1, Mr. Dick, it is true, is it not, that the market share of the top 20 was less in 1960 than it was in 1958?

A. Just a moment. Let me find it. You are saying in 1960 it is less than it is in '58?

Q. Right. Of the top 20.

[fol. 386] A. It doesn't show on this one that I have where '60 starts.

Q. This chart, I should say, is intended to carry up through the middle of 1960. That is what that column is.

A. I can't honestly answer that one by looking at this graph. It will have to be explained to me. I am assuming that this is '58, I am assuming this drop here is '59, and still is '59-'60 would start here, and they are regaining this.

Q. They are regaining it but they are less than they were in 1958.

A. If that stopping point is '60, it is less, I can see that.

Q. And that is true of the top 15 also, isn't it?

A. Yes.

Q. You were shown Dick Exhibits 2 through 7 and you have testified that you saw these when you signed your statement, and particularly with reference to Paragraphs 3 and 8. Did the examination of those Exhibits 2 through 7 for identification influence the opinion you expressed in Paragraphs 3 and 8?

A. Did they change my opinion?

Q. Did they influence this opinion which you express in Paragraphs 3 and 8 of your statement?

A. Let me look at 3 and 8. What did I say in 3 and [fol. 387] 8; No, I don't think so. What I have said in there I feel is true.

Q. They didn't influence your opinion at all?

Mr. Knight: He has answered the question.

The Witness: Let us put it this way. You are asking a question that is really cutting the corner here. Did they influence my opinion. Anything I read will influence my opinion as I read it as I go along. Let me put it this way. That is how my studies are made.

Mr. Alsop: Q. And if the figures shown in those statistics, Exhibits 2 through 7 for identification, are demonstrated to be inaccurate would that influence the opinion that you have expressed in Paragraphs 3 and 8?

A. Generally, no.

Q. You wouldn't change your opinion at all even if those were proven to be inaccurate?

A. I would say now there is a question a mile wide. I would say "No" because—May I answer?

Q. Yes.

A. All of my testimony, and I mean all of it, is my honest opinion. I mean you could rephrase all the questions you have asked me all over again, basically I would try to answer them the best I could because they are true.

Q. I am sure you would.

A. And I don't think that is going to influence me. [fol. 388] This is going to be percentage points off. I generally think, as I look at it, I haven't made a real detailed study of it, that this seems to be the trend that I see also.

Q. It does?

A. It seems to be that way, yes.

Q. And that is based on your study, particularly in your area but to some extent in the general area?

A. That's right.

Mr. Alsup: I have no further questions.

Recross-examination.

By Mr. Hughes.

Q. Mr. Dick, in Fairbank Exhibit No. 1, referring back to that exhibit, do you believe the fact that this line does not regain as high a point at the end of the chart that it could have been caused by or influenced by the strike in 1959?

A. Let us take which line now, the top three?

Q. Actually any line.

A. Any line up at top 2 you are referring to? Well, as you will see, in '58 the line is higher. The one Mr. Alsup was asking me about, 20, is lower. But frankly as this line goes along I say the sharp drops are gone and the sharp increase, as you see them, I feel that they are going to regain some stature that they had somewhere along the line. I am saying this is going to even off some [fol. 389] place. I am just looking at a graph. I don't know who you are talking about here, but I say somewhere along the line these things are going—maybe yes, maybe no. But I would have to know more what I am looking at or what I am referring to.

Mr. Hughes: I have no further questions.

Mr. Alsup: I have no further questions.

Mr. Hughes: Mr. Dick, will you waive signing this deposition at its conclusion, if it is agreeable to counsel that the deposition has been correctly taken by the reporter?

The Witness: Would I waive signing it?

Mr. Hughes: Yes.

The Witness: I assume it has. I am a trusting soul.

Mr. Vaughn: We will waive.

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[fol. 390]      TESTIMONY OF LESTER L. EATON

If subpoenaed to testify, Lester L. Eaton would testify as follows:

1. He is the owner and operator of Hillgrove Market, 15002 East Clark Avenue, La Puente, Los Angeles County, California. He has operated this business for the past ten years. In 1959, Hillgrove Market had sales of about \$450,000.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Eaton closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the "Buyers' Guide," a booklet similar to the Key Services, and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 [fol. 391] the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent

grocers has been obvious to him as a result of his observations.

4. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

5. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result, single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains [fol. 392] with Triple A financial status.

6. He would agree with Mr. Claude W. Edwards, president of Alpha Beta Acme Markets, Inc., a Von's industry witness, that it is far preferable to build your own grocery store from the ground up than it is to buy one already operating. However, he would testify that the cost of building and financing a new store is prohibitive, and to build one the size of the average large chain supermarket today would be impossible for an independent retailer with limited financial resources. With very few exceptions, only the large chains can build such stores today, and a single store operator generally gets started by buying an existing store.

7. The large chains have as much flexibility in buying supplies, in advertising and in pricing as do the single store operators. Almost every large chain belongs to Certified Cooperative and also buys direct. Therefore, they have every advantage of an independent and in addition they have their own direct buying organization. The large chains can and do advertise in local papers and in metropolitan papers, changing their advertisements and prices on short notice. An independent cannot be more flexible

in advertising than this. As for flexibility in pricing items, he would state that if he does not meet the advertised prices of the chain store, he will not sell his groceries.

[fol. 393] 8. He would also state that in an effort to compete with the chains some single store operators must give credit, delivery services and other personal attention. However, giving credit is not within the ability of the average independent since the independent cannot get credit from his suppliers to cover his purchases and the extension of credit requires a great deal more capital than the average independent has at his disposal. Further, the cost of maintaining a truck and employing a delivery boy would necessitate higher prices. This might attract some customers but would lose others and the relative merits of such advantages are marginal.

9. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

10. He would also testify that he purchases from the [fol. 394] Orange Empire Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major perishable products as fresh dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of the cooperative with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey

Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

11. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the picture presented in defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.5 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains [fol. 395] increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

12. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

13. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food iGant, were among the leading firms in the area.

14. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the [fol. 396] inventory in the stores has been adjusted with the result that the stores of both firms now carry the same

lines and the stores are known as "Von's-Shopping Bag."

15. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

16. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger

is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocery. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

[fol. 397] Deposition of LESTER L. EATON, taken on behalf of defendants, at 433 South Spring Street, Los Angeles, California, commencing at 11:30 A.M., Wednesday, April 17, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

[fol. 398] LESTER L. EATON, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Vaughn:

Q. Mr. Eaton, will you state your full name for the record, please.

A. Lester L. Eaton.

Q. What is your residence address?

A. 1035 Latchford, Hacienda Heights.

Q. You presently operate the Hillgrove Market at 15002 East Clark Avenue, La Puente, California?

A. Yes, sir.

Q. How long have you operated that market?

A. Ten years.

Q. That takes it back to 1953.

A. Yes.

Q. How old are you, sir, if I may ask?

A. Thirty-four.

Q. Did you have any prior experience in the grocery business before?

A. A short prior experience to that, about six months.

Q. In what capacity?

A. As managing a store.

Q. For whom?

[fol. 399] A. A person by the name of Mr. Edgerton.

Q. This same store?

A. Yes.

Q. And then you purchased it from Mr. Edgerton; is that correct?

A. Yes, sir.

Q. For how much money? What was the total purchase price?

A. About \$8,000.

Q. How much of that did you pay down?

A. None, sir.

Q. Nothing?

A. Nothing.

Q. About how much total capital did you have to commence this venture?

A. I had a thousand dollars.

Q. I take it that you have been paying Mr. Edgerton or have paid him installments out of the earnings of your business?

A. Yes, sir.

Q. Have you paid off your obligation to Mr. Edgerton?

A. Yes, sir.

Q. When did you make the last payment?

A. Well, this was much before the time was out and I had to go to the bank and borrow money to complete my [fol. 400] obligation. He demanded the money before the period of time was up. So I had to find other financing.

Q. How large is the Hillgrove Market?

A. Over-all size about 2500 square feet, sir.

Q. Was the thousand dollars that you had your total savings and assets at the time?

A. Yes, it was, sir.

Q. Do you know what annual sales Mr. Edgerton was experiencing at this location?

A. No, not basically I don't, sir.

Q. How did you do your first year?

A. About \$6,000, I think.

Q. \$6,000 a month?

A. No, I am sorry. Yes, a month, that would be about what I did.

Q. That would work out to \$72,000 for the first year?

A. About.

Q. What are your present sales?

A. Monthly or yearly?

Q. Yearly, if you can.

A. About four fifty, sir.

Q. Has there been a steady increase from 1953 to 1963 from the \$72,000 a year?

A. Up to about two years ago, sir, three years ago, I would say it leveled off.

[fol. 401] Q. It has leveled off?

A. Yes.

Q. Has it declined any?

A. No.

Q. Can you tell me what competition you face in the general vicinity of your store and how far away other stores are from you?

A. We have a Thriftmart within a mile radius, a Gateway within a mile radius of us, a mile and a half we have a Market Basket, and we have a Bon's—or Shopping Bag, pardon me, that is about two miles, and Food Giant. Those are the closest ones in the vicinity.

Q. Food Giant about two miles away?

A. Yes, sir.

Q. Any other independent operators in the radius of, say, two miles?

A. Not left in the grocery business.

Q. Not in the grocery business?

A. Not in the grocery business.

Q. So you stand alone against all these chains; is that right?

A. Yes, sir.

Q. How about discount houses, are there any discount houses with food departments that you compete with?

A. Our closest one would be three to four miles.

[fol. 402] Q. Which is that?

A. Jimco is our closest.

Q. That is operated by Lucky Stores, is it not?

A. Yes.

Q. Isn't it generally true that discount houses are regarded as having a larger draw area than a conventional supermarket?

A. They tend to want to draw, or they want to draw from a larger area, let's put it that way.

Q. So you may be in competition with this Jimco despite the fact that it's a little farther away than your other competitors; isn't that right?

A. Yes.

Q. What is the present net worth of your business?

A. I would say \$25,000, sir.

Q. \$25,000?

A. Yes.

Q. In addition to that do you own some other real property in La Puente?

A. Yes, I do.

Q. Directly across the street, isn't it?

A. Yes, sir.

Q. Did you purchase that with profits that you earned out of your grocery business?

A. Yes, sir.

[fol. 403] Q. What was the purchase price of that property?

A. \$30,000.

Q. When did you buy that?

A. A year and a half ago, sir.

Q. Do you have any plans for the development of that property?

A. I have nothing on paper, sir. In the future I hope to develop that property, yes.

Q. In what respect? What do you intend to do with it?

A. I intend to build a market.

Q. Any particular size market?

A. Between 8,000 and 10,000 feet, sir.

(Discussion off the record.)

Mr. Vaughn: Q. Did you bring along with you a copy of the testimony of Lester L. Eaton, which you had signed in connection with this case?

A. Yes, I did.

Q. I wonder if I might ask you to take that out and refer to it. Specifically I would like you to look at Paragraph 3 of the statement. You state, "On the basis of his—" and I assume this means yours "—continued study of retail grocery merchandising in the Los Angeles Metropolitan Area, the witness—" I assume that is you "—would testify that in the period since 1950 the number of single store grocery retailers operating in the area decline." [fol. 404] What area were you referring to there, sir?

A. I was referring to the La Puente Valley.

Q. The La Puente Valley?

A. Yes, sir.

Q. And this is the only area with which you have any real familiarity; isn't that right?

A. Yes, sir. It is a close area. We take a look at a general area. We take a look at other areas growing and try to base ourselves on it.

Q. Does the La Puente Valley, as you have referred to it, include an area that is larger than two miles from your store in any direction?

A. Yes, I say it would. It probably would go into a four or five mile area.

Q. As I understand it, in the particular area where your store is located there was one independent in 1950, Mr. Edgerton, and there is one independent now, and that is you; is that right?

A. Yes.

Q. Can you name any other independents that do business in which you refer to as the La Puente Valley?

A. New business now, sir?

Q. At any time since 1950.

A. We have Leo's Markets, we have Moore's Market.

Q. Is that Leo's Markets one market?

[fol. 405] A. There was two.

Q. Both in La Puente?

A. Yes. Moore's.

Q. Is that one market?

A. Yes, one market. We have the La Puente Grocery, we have Codd's Markets.

Q. How many were there?

A. There was three in total. Stacey Junior Market, we have had Clark's Market. These are markets that have been taken over by other acquisitions.

Q. All of these markets?

A. No, sir. Some of them are out of business.

Q. Let us find out the ones that are out of business and the ones that have been taken over. How about Leo's Markets?

A. They are out of business.

Q. The locations where they operated grocery stores are now not operated as grocery stores?

A. Right.

Q. How about Moore's?

A. No, he is not there.

Q. La Puente Grocery?

A. Not there.

Q. Codd's?

A. It has re-opened again. Let's put it this way, it [fol. 406] was re-opened. Codd's was closed and re-opened again.

Q. Under other management?

A. Yes, sir.

Q. Not all of the three Codd's Markets were in the La Puente Valley, were they?

A. No. Two are in Covina. In fact both of the others were in Covina, one in town and one adjacent to the town.

Q. Mr. Codd was a former Alpha Beta employee, wasn't he?

A. Yes, I believe he was.

Q. Do you know Mr. Codd?

A. Not personally, sir.

Q. Have you any information as to why his company went out of business?

A. No, sir.

Q. Haven't you heard or read in your study of this area, as reflected in your statement, that Mr. Codd expanded very rapidly?

A. Yes.

Q. And maybe too rapidly?

A. This would be a base for it.

Q. Had he been financed by Orange Empire, do you know?

A. This, I do not know.

Q. Did he make any other investments outside of the [fol. 407] grocery business?

A. I do not know.

Q. So you don't know whether he made investments outside the grocery business which may have contributed to his failure?

Mr. Coyle: He already said he doesn't know.

Mr. Vaughn: Q. Mr. Codd's store in La Puente, wasn't that an old Alpha Beta Store?

A. No.

Q. Were either of the stores in Covina Alpha Beta Stores?

A. One in Covina was, yes.

Q. Is that the one he started with?

A. Yes, I believe it was.

Q. Let me go back and ask you about the two Leo's Markets. How large were they?

A. Oh, I don't know exactly. I would say approximately 8,000 feet and one was six.

Q. How about Moore's?

A. He was approximately 3,000.

Q. Comparatively a small store?

A. Yes.

Q. La Puente Grocery?

A. Probably 5,000.

Q. How about Codd's in La Puente?

A. The Codd's in La Puente was a good size, I would [fol. 408] say from twelve to fifteen.

Q. How about the Stacey Junior Market?

A. About eight to ten, sir.

Q. Is that still being operated by someone?

A. Yes, it is.

Q. How about Clark's?

A. Clark's Market has been bought out by Food Giant.

Q. Is that the Food Giant that is two miles away from you?

A. Yes, sir.

Q. And somehow I missed this. Is the Codd's Market still being operated by someone?

A. Yes, it is.

Q. By whom, by the way?

A. It was re-opened. It was closed and then someone re-opened it. I do not know who.

Q. So the ones that have gone out of business and have not had anyone take over the business or re-open them are the two Leo's Markets, Moore's Market and the La Puente Grocery; is that right?

A. Yes, sir.

Q. And that is in an area of approximately how many square miles?

Mr. Coyle: Why don't you ask the radius.

Mr. Vaughn: Q. All right, the radius.

[fol. 409] A. I would say a two to three mile radius.

Q. Are you acquainted with whether or not the total number of grocery stores in areas other than the La Puente Valley have declined since 1950?

A. In the reading, yes, it shows the decline.

Q. Have they declined in Orange County?

A. Yes, they have.

Q. Have they declined in the San Fernando Valley area?

A. Yes, in all markets, yes.

Q. You base this on what?

A. On the report from the State Board of Equalization.

Q. And I take it that your independent observations don't tell you anything about Orange County or the San Fernando Valley?

A. Only what I can read through the Commercial Bulletin and stores closing and so forth.

Q. Are you able to say, independent of anything that the Board of Equalization statistics show, that there have been more closings than there have been store openings in areas outside the La Puente Valley?

A. No, sir.

Q. During the period when you have noticed in the Commercial Bulletin, and otherwise, that small markets are closed, you have also seen notices that other markets have [fol. 410] opened, have you not?

A. Yes, sir.

Q. Some of them small?

A. Yes.

Q. You don't know which is the greater, the openings or the closings; is that right?

A. The greater is the closing than the opening.

Q. In the Los Angeles metropolitan area?

A. Yes.

Q. How did you determine this?

A. By the figures of the State Board.

Q. Simply by reason of the figures of the State Board?

A. Right.

Q. If it could be demonstrated to you that those figures were inaccurate I take it that you would have to change your opinion.

A. Yes, sir.

Q. Let me ask you this. Let me talk about your competitors that you have listed. When did the Thriftmart open in La Puente?

A. That has been five years ago.

Q. Gateway?

A. Two years ago.

Q. Market Basket?

A. Four or five years ago, sir.

[fol. 411] Q. Shopping Bag?

A. Shopping Bag was, I would say, eight years ago. One of the first.

Q. Food Giant, I take it that is the old Codd Market. When did Mr. Codd first put that store in there?

A. Now, the Food Giant was built specifically. It opened, oh, probably six years ago under Clark's.

Q. That's right, that was Clark's.

And the Jimco, when did that open?

A. About two years ago, sir.

Q. So all of these stores have opened since you acquired the Hillgrove Market; is that right?

A. Yes.

Q. And nonetheless your sales have increased until the last three years when they leveled off; is that right?

A. Yes. May I add there that we have had quite an increase in population in our area too.

Q. Yes, sir. That is probably the reason why these chain stores came in, wouldn't you think?

A. I would say in volume.

Q. In fact it was necessary, to serve this area, that there be more stores, was it not, in the last ten years?

A. Yes.

Q. Have you ever attempted to get a store in a shopping center, Mr. Eaton?

[fol. 412] A. Yes, I did.

Q. Would you tell me about that?

A. I attempted here, we have a person creating a shopping center up on Hacienda and I approached the people and asked about it and so forth, why, the last word in talking to them was that Alpha Beta had signed a contract with them.

Q. Shopping Bag had the requisite finances and other attractions to get into shopping centers prior to the merger, did it not?

A. Yes.

Q. And so did Von's, did it not?

A. Yes.

Q. Can you tell me any way in which the merger itself has affected, one way or other, the inability of smaller concerns to get into shopping centers?

A. Well, it brings them down to one master planning where you have just one person rather than a group fighting against somebody to get into it. So it gives them a greater ability. It would give them a larger financial backing to get into them, greater power of advertising to get into them.

Q. You said before that Shopping Bag could get into shopping centers prior to the merger and so could Von's; right?

A. Right.

Q. Now Von's can get into shopping centers, can it not?

[fol. 413] A. You say they can or can't?

Q. Can.

A. Yes, I would say so.

Q. And there are many other concerns which can get into shopping centers, are there not?

A. Yes.

Q. Maybe a dozen others; isn't that right?

A. Yes.

Q. Has the merger then really changed the picture with regard to the inability of the smaller concerns to get into shopping centers?

A. No. Except with more power, I would say. I mean you would have more power.

Q. Von's is now a larger organization?

A. Right.

Q. But now instead of Von's and Shopping Bag grap-

pling for shopping centers against the smaller concerns we have only Von's; isn't that right?

A. Right.

Q. And all the other large chains which get into shopping centers.

A. Yes.

Q. Are you aware from your study of the grocery industry of legislation now pending before the Congress which would give financial assistance to smaller concerns [fol. 414] in their attempt to get into shopping centers?

A. The only knowledge I have is the fact that the small business bureau has been more lenient in the last year with loans.

Q. You do not know about any new legislation which would in effect have the government guarantee the leases of the smaller concerns?

A. No, sir.

Q. Would you be in favor of such legislation?

A. Yes, I would.

Q. Most single store operators don't start out by building a brand new store but they usually acquire an older store, don't they?

A. Yes.

Q. But some of them, if they are successful in their business, can gain enough capital so that they can acquire property in order to build a new store; isn't that right?

A. Yes.

Q. This is the way things usually happen, you have to start small and try and grow; isn't that right?

A. Yes.

Q. So your statement in Paragraph 6, where you say that you agree with Mr. Claude W. Edwards of Alpha Beta, that it is better to build your own grocery store, means that once an independent operator has gained experience and some resources from his business he can go out and do just that, can he not?

Mr. Coyle: The statement is clear on its face.

Mr. Vaughn: It was a bad question, Mr. Coyle. Let me try again.

Q. It is possible, is it not, for a single store operator, a relatively young man, to buy a small grocery store for a relatively small amount of money, make it successful and

with the experience he there gains and with the financial resources he there gains, then acquire property on which he can build one of these more desirable stores; isn't that right?

A. Yes, if things go right, if you don't run across a snag like a supermarket set down on top of you in the meantime.

Q. That is just about what you have done, isn't it?

A. I have tried to, yes.

Q. And you got that piece of property and you plan to build a store on it; isn't that right?

A. Yes, sir.

Q. I compliment you on it.

Would you refer to Paragraph 7 of your statement, sir, and particularly to the statement, "Almost every large chain belongs to Certified Cooperative and also buys direct." Do you belong to Certified?

A. No, sir.

[fol. 416] Q. Spartan?

A. No, sir.

Q. Orange Empire?

A. Orange Empire.

Q. Can you tell me whether Safeway belongs to any cooperative?

A. Not to my knowledge.

Q. Does Ralphs?

A. Not to my knowledge.

Q. Does Market Basket?

A. This I don't know.

Q. Does Thriftmart?

A. Thriftmart owns and runs the Iris-Smart & Final Company, which is a wholesaler. Thriftmart-Fitzsimmons Company.

Q. So when you say that almost every large chain belongs to Certified Cooperative, that has to be amended a little bit to include those several whom we have mentioned who are not members of a cooperative.

A. I would say at a time at the beginning they belonged until they were big enough to acquire their own facilities.

Q. Do you ever shop—when I say "shop" do you ever visit—the stores of your competitors?

A. Yes, I do.

Q. Do you notice what they are doing in their particular stores?

A. Try to, yes, sir.

Q. Do you notice what prices they are charging?

A. Well, not so much by this visiting of it but by the Buyer's Guide which we subscribe to.

Q. What is your purpose in visiting the other stores?

A. Check on arrangement and displays and so forth, from which we can create or help create ideas of our own.

Q. You can sort of see the mistakes they are making and sort of counteract them by doing the right thing in your store; isn't that right, sir?

A. We try, sir.

Q. And this covers a broad range of merchandising problems; isn't that right?

A. Yes, it does.

Q. After you come back from visiting Thriftmart or a Shopping Bag, seeing what they are doing, you decide on changes that you want to make. You can make those changes almost immediately, can't you?

A. It depends on the changes. Most of them it takes some time, it depends on when you have to get into it. If it's a structural change it takes a little more time.

Q. But if you are going to shift a display from the back of the store to the front of the store, that is something that can be done in a day, isn't it?

[fol. 418] A. Yes.

Q. And that frequently happens, does it not?

A. Yes, it does.

Q. Do your chain store managers come into your store?

A. I have had some, yes.

Q. They look at what you are doing?

A. Yes.

Q. Do you know what they have to do in order to make the same change that you do?

A. No, sir.

Q. Isn't it true that they have to go back? Can they make that change, shifting a product from the back of the store to the front of the store, right away or do they have—

Mr. Coyle: He has testified he doesn't know.

Mr. Vaughn: Q. —or do they have to clear with their superiors before they can do it?

A. This I don't know exactly. I feel that they have quite a bit of ability of their own, that each store is not set up to a pattern and each store is based on the manager's way of promoting and so forth. If he feels that he can promote this a little better than shoving it in the corner, why, I would think that this item would be promoted.

Q. Could he change a price?

A. This I don't think so, sir.

Q. You don't think so? You can change a price just [fol. 419] like that, can't you?

A. Yes, sir.

Q. And he has to clear through his chain headquarters, which may take days before he can change a price?

A. I am not sure.

Q. That is your understanding, isn't it?

A. That he does, yes.

Q. And then the chain management may not permit him to make that change; isn't that correct?

A. I can't answer that. I don't know, sir.

Q. Wouldn't you say, though, that you have a greater flexibility in making merchandising price changes than the chain store manager?

A. No, not always.

Q. Could you explain that in the light of your previous testimony?

A. Well, yes. Due to the fact that in our business we follow what we call a change in a chain, or something like that. And consequently they have most generally made their change before we can go.

Q. But you previously stated that if you go to a chain store and you think they are making an error in their merchandising you come back and try to counteract that error by doing the right thing in your store; isn't that right?

A. It is not a change in the price, though. I would [fol. 420] say merchandising, or something like that. You are talking about flexibility of price in a chain store and so forth.

Q. Let us talk about flexibility in merchandising and

leave out price. Don't you think you are more flexible than the chain store?

A. Yes.

Q. Do you think this is an advantage to you over your chain competition?

A. No, I really don't.

Q. Do the chains ever reduce their prices to meet yours?

A. Not that I know of, sir.

Q. So that if you wanted to have a special item at a price lower than the chains you wouldn't be afraid of them coming down to meet your price, would you?

A. Yes, I would. If I became a thorn in their sides, I would.

Q. But let us say just tomorrow's special, or this week-end special. You are not afraid that the chain is going to reduce its price to meet yours, are you?

A. No.

Q. You have the ability, though, to reduce your price to meet the chain's, haven't you?

A. I do as a single man.

Q. You say in your statement that the large chains [fol. 421] can and do advertise in local papers and in metropolitan papers changing their advertisements and prices on short notice. What newspaper do you advertise in?

A. I don't advertise in newspapers, sir.

Q. You don't advertise at all?

A. No. I mail out. I have a direct mail.

Q. Suppose you had your mailing material all set up and I take it you send it to a printer.

A. Yes, sir.

Q. How soon before he goes to press can you make a change?

A. Once I mail it there is no changes.

Q. How soon after you mail it do you get it back?

A. Five days or four days.

Q. About five days?

A. Yes.

Q. Do you know whether or not a chain can change its advertising within a five-day period?

A. I know that on a slick and general paper, they advertise in our paper, it is set up and we can advertise after it is set up, in the general we can change before it goes

to press. If it goes to press on Tuesday for Thursday, why, we can change it Tuesday as it comes out for checking, which gives them two or three days prior to us.

Q. If you were to advertise in local papers you could [fol. 422] make these same changes, could you not, in the same time limits?

A. Yes, I could.

Q. And a chain has the same advertisement running—

Mr. Coyle: The witness wanted to say something.

Mr. Vaughn: I am sorry.

The Witness: But let me say this. It is to disadvantage to advertise in a local paper for me because of the fact that there is the Daily Tribune, for example, with forty or fifty thousand circulation, in my particular area I have maybe five hundred. And the advantage of a chain, or proper advertising, they are not advertising for one store, they are advertising for the forty or fifty thousand that will cover them.

Mr. Vaughn: Q. You mean you have only five hundred customers who read the local paper in La Puente?

A. I would say that that would be within the area.

Q. Your potential draw is only 500 people?

A. Not the potential. But we are not interested in somebody on the other side of town that wants to pick up the paper and head for our ads where you are covering not one store, you are covering a multiple of stores.

Q. Yes, sir, that is quite right. But we are just talking now about how rapidly changes can be made in newspaper advertising. It is true, isn't it, that the large [fol. 423] chains place the same advertisement in the metropolitan newspapers and in local papers all on the same day?

A. Yes.

Q. If they make a change in one they have to make a change in all of those advertisements, don't they?

A. Yes.

Q. Their limitation in making changes is governed by the newspaper which has the longest period between the time you could make a change and the time the paper goes to press; isn't that right?

A. Not all cases, because they could come out—Well, actually, yes, it would be.

Q. If the Los Angeles Times said, "We won't accept any changes after three days before the paper goes to press," and the La Puente paper says, "We will give you changes up to two days," you still have to make your changes by three days, don't you?

A. Yes.

Mr. Coyle: I just wonder, are we assuming that the chains in the Los Angeles area have the same price in all their stores?

Mr. Vaughn: Are you asking me that question?

Mr. Coyle: Is that what these questions are based upon?

Mr. Vaughn: Q. Is that your understanding, that they have the same prices in all their stores?

[fol. 424] A. In the ads, yes.

Q. Yes, in the ads. They don't run one ad in La Puente and another ad in the Los Angeles Times and another ad in Santa Monica?

A. No.

Q. And at a different price?

A. When you have a birthday you have a birthday, or a new store opening is in how many other units besides your one? Is it all tied into one.

Q. Right. But in any case if the independent was advertising in only his local newspaper he might well be able to make changes at a later time than chains; isn't that right?

A. I don't believe it is true, no.

Q. Do you know how soon after the printing of the paper you can make a change in an ad in the Los Angeles Times?

A. No, sir.

Q. Do you work full-time in your store yourself?

A. Yes, sir.

Q. On the floor?

A. Yes.

Q. Are you a long time resident of La Puente?

A. Ten years.

Q. Just the ten years you have been there?

[fol. 425] A. Yes.

Q. You have gotten to be pretty well known in the community?

A. Yes.

Q. Do you make a special effort to get to know your customers?

A. Yes. By being on the floor.

Q. To be friendly with them?

A. Yes.

Q. Courteous?

A. Yes.

Q. And I take it that you insist that your employees have a friendly and courteous attitude toward the customers.

A. Yes, sir.

Q. Do you think that the personal, friendly and courteous service that you can give is an important aspect of attracting customers and keeping customers?

A. I believe it is one of our survivals.

Q. It is in fact something that the chain can never quite duplicate; isn't that right?

A. I don't believe a chain lets their personnel duplicate it.

Q. And a lot of people like to be treated in a friendly and courteous way and to be served and they come back to your store because of that; isn't that right?

[fol. 426] A. Yes.

Q. Would you refer now to Paragraph 8 of your statement. There you talk about credit and delivery services. Do you give credit or delivery?

A. No, sir.

Q. And most grocery stores in Los Angeles do not; is that right?

A. No.

Q. No, they do not?

A. No, they do not.

Q. And this is true of both chain and single store operators; isn't that right?

A. Right. I feel this is a case where if you want to be competitive you cannot give this service. If you are in an area where you are catering to that, your Jurgensen's of Pasadena, you charge for this through your prices.

Q. And so to remain competitive and charge the same prices as the chain you can't give credit and you can't give delivery, can you?

A. No, sir.

Q. But these aren't the only services which you can give to attract the customers; isn't that right?

A. Well, you can give other services.

Q. These personal, friendly services that I am talking about are examples of other services that you can give to [fol. 427] attract customers, aren't they?

A. Right.

Q. And there are many stores, for example, that put up bulletin boards that anybody can use. Do you have that sort of a service at your store?

A. No, sir.

Q. But even though credit and delivery means higher prices there are grocers who have used credit, delivery and higher prices and have been very successful; isn't that so?

A. There are cases of it, yes.

Q. Do you know Hines Grocery Company in Pasadena?

A. Yes.

Q. That is an example, isn't it?

A. Yes.

Q. One store and they give credit and delivery?

A. But they are in what you would call an exclusive area.

Q. Yes, I would say that's right. And Jurgensen's is another example?

A. Yes.

Q. Is there a heavy Mexican-American population in La Puente?

A. It has been outgrown I would say. Go back 15 years ago and I would say it would be the Spanish Basque more than Mexican. Now it has tended to fade away to the point [fol. 428] that it is not considered that any more.

Q. Do you serve a large number of Spanish speaking people?

A. No, sir.

Q. Do you purchase your groceries from Orange Empire Co-op?

A. Yes.

Q. Do you feel that you buy your groceries as cheaply as a chain by buying through Orange Empire Co-op?

A. Most of them.

Q. And Orange Empire Co-op have large warehouses?

A. Yes.

Q. Serviced directly by railroad shippers; is that correct?

A. Yes.

Q. And they operate large trucking facilities, too, do they not?

A. Yes.

Q. When did you say you purchased the property across the street?

A. A year and a half ago, sir.

Q. Do you think it has increased in value since you purchased it?

A. Yes, I think it has increased.

Q. Would you say that the investment that you made in [fol. 429] that property gave you any competitive advantage in the operation of the Hillgrove Market?

A. I don't follow your questioning, sir, on that.

Q. The fact that you invested in real estate in the La Puente area, right across the street from you, do you feel that makes any difference, gives you any competitive advantage in your present operation?

A. No, I don't.

Q. Do you think that Von's investment in Jerseymaid gives them any competitive advantage in attracting customers?

A. Yes.

Q. What dairy do you deal with?

A. Challenge.

Q. Is Challenge a well advertised product?

A. I would say they have a minimum of good advertising.

Q. More than Jerseymaid, don't they?

A. No, I wouldn't say so.

Q. But do you think that you attract more customers into your store because you sell Challenge dairy products than Von's attracts because it sells Jerseymaid?

A. No.

Q. Do you think that Von's attracts more because it sells Jerseymaid than you do because you sell Challenge?

A. This would be a specific I couldn't answer on.

Q. It is pretty even, though, isn't it? It really doesn't [fol. 430] make that much competitive difference, does it?

A. In the attracting of people, no. But in the other ends

of it, since it all falls into one pocket, it is all said and done, the profits.

Q. And Von's might have made just as much money had it invested in real estate as you did than if it invested in Jerseymaid; isn't that right?

A. Possible, yes.

Q. Or if they bought common stocks; isn't that right?

A. Yes.

Q. Would you refer to Paragraph 15 of your statement, please. Would you tell me what the acquisitions and consolidations in the retail grocery field since 1948 are, the ones that you had in mind when you signed this statement?

A. Well, you can go back to your Raisin, to Alpha Beta and Acme and American and come back to Food Giant into Clark's, Food Giant has acquired McDaniel's Markets, Von's Shopping Bags. The Foxes took over a number of markets to become what they were before they disappeared. This is a few of them.

Q. How many stores did Clark's have when they were acquired by Food Giant, do you know?

A. I am not sure. I think the number was three, sir, that they had.

Q. How many did Food Giant have at that time?

[fol. 431] A. This I am not sure.

Q. Do you know about when that merger occurred?

A. About five years ago.

Q. Didn't Food Giant have less than ten stores at the time they acquired Clark's?

A. This I am not sure in the statistics, sir.

Q. The Acme-Alpha Beta merger occurred after the Von's-Shopping Bag merger, did it not?

A. Datewise I am not sure, sir.

Q. It is my information that it did occur afterwards.

Was Acme operating any stores in the Los Angeles metropolitan area prior to their acquisition of Alpha Beta?

A. Under the Acme name?

Q. Under any name.

A. Not that I know of. I don't know of any.

Q. Fox made a number of acquisitions, as you have stated, and after 1960 they went into bankruptcy, didn't they?

A. Yes.

Q. Do you know the reason why they went into bankruptcy?

A. There has been many stated and they keep digging up more that they find out.

Q. Isn't the one most often stated that Fox expanded too rapidly with inadequate capital?

A. This is one that you hear real common, yes.

[fol. 432] Q. And you believe that to be so?

A. I think this is part of it. I wouldn't say it was all of it.

Q. What else might have contributed to Fox's failure?

A. Well, actually I would say some of his advertising programs of giving things away would be one of the main factors, a free trip to Hawaii and what have you.

Q. Did they have poor locations?

A. At the time of some of these acquisitions I would say no, because I know they acquired or bought some of the finest markets in the area at this particular time.

Q. Do you know whether they had a number of poor locations at the time of their bankruptcy?

A. No, I don't.

Q. Do you know that a number of Fox's locations have been sold off to single store operators and small concerns since their bankruptcy?

A. Yes.

Q. And that they have about 18 remaining stores that are being operated by Food Fair?

A. Yes.

Q. And Food Fair is one of the largest national chains; is that not correct?

A. Yes.

Q. There are other national chains here, too, are there [fol. 433] not, such as Safeway?

A. Yes.

Q. Isn't that the second largest chain in the nation?

A. Yes.

Q. A & P?

A. A & P.

Q. Is that the first largest chain in the nation?

A. Yes.

Q. And Acme is the fourth largest; isn't that right?

A. I am not sure.

Q. But it is a large national chain?

A. Yes.

Q. In addition to those national chains there are chains such as Mayfair and Lucky which operate stores in the Northern California area and in other states; isn't that right?

A. Yes.

Q. Von's at the time of the merger operated stores only in Los Angeles and Orange County; isn't that right?

A. Yes.

Q. And Shopping Bag likewise, except they had two in San Bernardino County, isn't that right?

A. Yes.

Q. Do you believe, in view of the fact that there are these large national and regional chains in Los Angeles, [fol. 434] that the merger made Von's the dominant factor in the Los Angeles metropolitan area?

A. Yes, I do.

Q. On what do you base that statement?

A. Because you still have a closer knit and a closer concentration of your power of advertising and what have you.

Q. Do you know how many stores Safeway has in the Los Angeles metropolitan area?

A. No.

Q. Do you know if they have more than Von's?

A. No, sir.

Q. Do you know if Alpha Beta has more stores than Von's?

A. No, I don't.

Q. Would you refer to Paragraph 16 of your statement, Mr. Eaton. You state there in the second sentence that this merger is a major stride in increasing the market share of the large chains. I take it that you mean only that Von's and Shopping Bag, or Von's increased its market share. I take it you do not believe that the merger increased Safeway's market share.

A. No, sir.

Q. Or any other chain's market share?

A. No.

Q. Do you know what Von's market share is today?

[fol. 435] A. On the stock market, sir?

Q. Not on the stock market, no. What percentage of

the total grocery sales in the Los Angeles metropolitan area are accounted for by Von's?

A. The statistics of 1960 is 8.9 per cent.

Q. How about Safeway?

A. They run around 7.

Q. Are these statistics the ones shown to you by the government?

A. Yes, sir.

Q. Is that the basis for your knowledge about their share of the market?

A. Yes.

Q. And I take it that your conclusions would change if it could be shown that those statistics were in error.

A. Well, this is brought up to 1960, which would complete the last three years.

Q. I take it that you have no independent way of knowing whether those statistics are accurate or not, have you?

A. No, sir.

Q. Do you know what share of the market Shopping Bag had just prior to the merger?

A. They had four point something, sir, prior.

Q. This addition of this roughly four per cent to Von's [fol. 436] total is what you refer to as a major stride in increasing the market share of the large chains; is that right?

A. Yes.

Q. I take it that your statement that Shopping Bag had four point something percentage share of the market is also based on statistics supplied to you by counsel for the government?

A. Yes, sir.

Q. And the same observations about their accuracy would hold true as in the case of these statistics about Von's share of the market in 1960?

A. Yes, sir.

Q. You state in the first sentence of Paragraph 16 that in all likelihood it will develop that a few large grocery chains will dominate the retail grocery distribution throughout the Los Angeles metropolitan area. You say this because you fear there will be other mergers?

A. Yes.

Q. What other firms would you expect to merge?

A. Well, one of the recent ones of talk, which has fell off I believe now, has been the Lucky and Market Basket.

Q. Negotiations for that merger have been terminated, have they not?

A. I don't know whether they have completely terminated [fol. 437] but they have been set aside for a while.

Q. Isn't it true from your study of the trade papers that as long ago as 1960 it was announced by the management of Market Basket that they had terminated negotiations with Lucky?

A. It seems more recent to me than that, sir.

Q. That there was such an announcement?

A. Yes.

Q. Any other mergers that you foresee?

A. Not at the present.

Q. In other words, your statement that there may be more mergers in the future is really speculation on your part, is it not?

A. Yes.

Mr. Vaughn: I have nothing further.

Mr. Coyle: Would you mark for identification as Eaton Exhibit No. 1 the document entitled "Testimony of Lester L. Eaton."

(The document referred to was marked by the notary public as Eaton Exhibit No. 1 for identification, a carbon copy of which is attached.)

#### Cross-examination.

By Mr. Coyle:

Q. Mr. Eaton, I show you a document entitled "Testimony of Lester L. Eaton" marked for identification as [fol. 438] Eaton Exhibit 1 and I ask you if this is a copy of the statement you have been referring to in the course of your testimony.

A. Yes, sir.

Q. Referring specifically to Paragraph 3 of your statement, in which you refer to certain government exhibits prepared by the State Board of Equalization, and to Paragraph 11 in which you refer to certain exhibits prepared by the defendants, and also to certain exhibits prepared

by the government from the Bureau of Census reports, I ask you whether these documents marked Fairbank Exhibit 1, Craun Exhibit 1 and Dick Exhibits 2 through 7, I ask you whether these are the exhibits you referred to in those paragraphs of your statement.

A. Yes, they are, sir, except for the Craun here.

Q. You didn't see this Craun exhibit?

A. Yes, sir.

Q. You have stated in your examination that if any of these exhibits proved to be inaccurate you might change your statement as to the conclusions you drew. Were you referring to a gross inaccuracy rather than an inaccuracy with respect to a given figure or a given detail on any one of those exhibits?

A. I was referring to the fact that time had elapsed from the time these figures were produced until the present date.

[fol. 439] Q. In a general way you based some of your testimony upon them?

A. Yes.

Q. But you don't vouch for specific figures with respect to a given year or given date, or exact percentages, because you didn't make the computations yourself; is that correct?

A. Right.

Q. You mentioned the fact that your net worth has increased over the years. Has some of this increase in net worth come about because the property you own out in La Puente has increased that net worth in value?

A. Yes.

Q. Would you say the majority of your increase in net worth has come from the fact that the property has appreciated out there?

A. Yes, I would say a good proportion of it.

Q. You mentioned in your testimony that because of the increasing population of the La Puente area there was need for more stores out there to sell merchandise to the people. Would some of those independents who have gone out of business been in a position to sell that increasing population?

A. Well, it comes up to a bare point of this. When we have a major chain move in the area and they set down on [fol. 440] it, they can move in within a year, or something before actually it is ready to produce the given amount.

Consequently they can sit there and take the business, plus.

Q. And if a chain set down next to your property, that you hoped to build on, would that alter your plans with respect to that property?

A. By all means.

Mr. Coyle: I have no further questions of this witness.

Redirect examination.

By Mr. Vaughn:

Q. Speaking of your net worth, do you own the land on which the Hillgrove Market is located?

A. No.

Q. You lease that?

A. Yes.

Q. And you purchased the property across the street for \$30,000, did you not?

A. Yes.

Q. What is it on your books at today?

A. This I don't know, sir. I would have to check with my bookkeeper.

Q. It is still on there at \$30,000, wouldn't you imagine?

A. I imagine.

[fol. 441] Q. So increase in land values has not accounted for any of your increase in net worth as reflected by your books; isn't that right?

A. This I don't know.

Q. Do you remember ever signing a statement saying that your present net worth was \$87,000?

A. No, sir.

Q. If I may go back for a moment to the Food Giant acquisition of certain McDaniel's Stores, it is a fact that McDaniel's found itself, within the last three years, in financial difficulty; isn't that correct?

A. Yes.

Q. And started selling off many of its stores?

A. Yes.

Q. And when they started selling off stores they had somewhere around 24 or 25 stores; right?

A. Yes.

Q. And it sold off all but about ten of those stores prior

to making any deal with Food Giant; isn't that correct?

A. Ten or twelve, I believe.

Q. And most of those stores sold off prior to the deal with Food Giant were sold to single store operators and small concerns, isn't that correct?

A. Yes.

Q. Then it went into bankruptcy or made an assignment [fol. 442] for the benefit of creditors and then its remaining stores were acquired by Food Giant; is that right?

A. Yes.

Q. All but one, I think. I see out on the San Bernardino Freeway that there is a sign still up there that there is a McDaniel's Store for lease.

A. They also have one on Orange Avenue there that was taken over by an independent through lease, and so forth, and they closed it on them.

Q. McDaniel's closed it on them?

A. I believe Food Giant closed them.

Mr. Vaughn: I have nothing further.

Mr. Coyle: I have one more question.

Recross-examination.

By Mr. Coyle:

Q. You used the word "speculation" in connection with some of your testimony as to your feeling that there might be more mergers if this merger is permitted to stand. When you used that term "speculation," were you referring to your conclusion based upon your observation and experience?

A. Yes.

Mr. Vaughn: I will object to the question as being leading and suggestive.

[fol. 443] Redirect examination.

By Mr. Vaughn:

Q. Let us go back to this "speculation." The Von's-Shopping Bag merger was in 1960, was it not?

A. Yes.

Q. How many mergers have there been since that time?

A. I don't recall of any, sir.

Q. So we have three years pass by without any more mergers after the Von's-Shopping Bag merger. On what basis then do you assume that there will be further mergers?

A. I would assume the fact that if this is a successful merger it opens the gate for more people.

Q. Can you tell me what firms you expect to merge? Do you think Ralphs will merge?

A. I have no idea.

Q. Do you think that Safeway will merge?

A. This I have no idea.

Q. Really, you don't know who might merge in the future.

A. No.

Q. So wouldn't it be fair to characterize your assumption as to the future as speculation?

A. Yes, if you want to put it that way.

Mr. Vaughn: Thank you. I have nothing further.

[fol. 444] Recross-examination.

By Mr. Coyle:

Q. That assumption or speculation is still based on your experience and observation, isn't it?

A. Yes.

Q. And based upon your experience and observation, and the fact that this case has been pending ever since the acquisition took place has a deterring effect upon other possible mergers between chains?

A. Yes, they do.

Redirect examination.

By Mr. Vaughn:

Q. That is speculation too, isn't it?

A. I don't use the word speculation. It is just foreseeing.

Q. Your guess?

A. My guess.

Q. Because you don't know what is going on in the mind of Mr. Ralphs?

A. No. I wish I did.

Mr. Vaughn: That is all.

Mr. Coyle: Although this is not our witness I am going to ask him to waive the signing of the deposition, if counsel is agreeable.

Mr. Alsup: Before I agree to that statement I should [fol. 445] add that we have been furnished with a statement by the government as to what you would testify to, Mr. Eaton, if you were called by them as a witness and this is a statement that you have been referring to here today; is that not correct?

The Witness: Yes, sir.

Mr. Alsup: You regard yourself as a government witness, don't you?

The Witness: Yes.

Mr. Alsup: We will stipulate.

Mr. Vaughn: We will stipulate if you are agreeable to waiving the signing of the deposition.

The Witness: I am agreeable.

Mr. Coyle: So stipulated.

[fol. 445a] IN THE UNITED STATES DISTRICT COURT

Honorable CHARLES H. CARR, Judge Presiding

No. 336-60-CC Civil

[Title omitted].

**Transcript of Proceedings**—June 11, 1963

Los Angeles, California

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[fol. 446] TESTIMONY OF DON HENRY FAIRBANK

If subpoenaed to testify, Don Henry Fairbank would testify as follows:

1. He is the senior partner in Don's Market, 10038 Paramount Boulevard, Downey, Los Angeles County, California. He has been in the grocery business for the past five years. Since 1945 he has been a meat retailer in Bell, California, on three separate occasions. In 1959, Don's Market on Paramount Boulevard had sales of about \$1,200,000. Mr. Fairbank would testify that Don's Market is a member of a two store operation. The second grocery store is D & B Market, Inc., in Trona, San Bernardino County, California. The president of that market is Dean Fairbank, the son of the witness. D & B Market had sales of about \$900,000 in 1959. On October 13, 1962, he sold Lucky Five, Inc., a corporation in which he had held about 58% of the stock. This was a grocery store at 9511 East Firestone Boulevard in Downey which had done about \$600,000 in business in 1959.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Fairbank closely inspects all grocery advertising by the major chains as it [fol. 447] appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services, and

follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin," "Super Market Merchandising" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since he has been in the grocery business the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations he would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not [fol. 448] have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status. He would testify that his own unsuccessful experience in attempting to get into shopping centers corroborates his opinion.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses,

and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

[fol. 449] 7. He would also testify that Don's Market purchases from Certified Cooperative, and the D & B Market purchases from Orange Empire Cooperative. The cooperatives enable the markets to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major perishable products as fresh dairy, meat, and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Thus, they have combined the advantages of the cooperative with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the picture presented in the defendants' exhibits which show that in the period between 1950 and 1958 the market share of the eight largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the nine largest chains increased from 34.3 per cent to 41.7 per cent; [fol. 450] the market share of the fifteen largest chains increased from 38.4 per cent to 50 per cent; and the market share of the twenty largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sale of the largest chains.

9. He would state in his testimony that he observed the operation of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their advertising is [fol. 451] consolidated; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same line and the stores are known as "Von's Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the

[fol. 452] sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 453] Deposition of DON HENRY FAIRBANK, taken on behalf of defendants, at 433 South Spring Street, Los Angeles, California, commencing at 9:00 A.M., Monday, April 15, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

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DON HENRY FAIRBANK, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Alsup:

Q. Mr. Fairbank, would you state your name and address.

A. Don Henry Fairbank, 6627 Riverside Avenue, Bell.

Q. What is the address of your business?

A. 10038 Paramount Boulevard, Downey.

Q. We have been furnished with a statement by the government attorneys of what would be your testimony. Have you read that?

A. I have.

Q. Have you read it recently?

A. I have.

Q. Will you keep it before you, please, because I [fol. 454] have a few questions to ask you about it. This statement says that you have been a grocer for five years; is that correct?

A. That's correct.

Q. Is that at your Paramount location in Downey?

A. Yes, sir.

Q. When did you acquire that location?

A. 1951.

Q. In 1951?

A. Yes.

Q. Will you explain the five years?

A. The first five years I had the grocery department

leased to another man. At the end of that five years I took it over myself.

Q. From whom did you acquire this store?

A. Thomas H. Seabring.

Q. Had he been a grocer there before?

A. He had.

Q. What was your investment?

A. You mean in the grocery department?

Q. Well, I assume you bought the land and the store. Am I wrong?

A. Well, in a sense you are, yes. I leased the land and built the building myself. I could approximate it for you. [fol. 455] Q. Just an approximation.

A. I would say maybe \$150,000.

Q. In 1951?

A. Yes.

Q. What would you say the net worth is now?

A. Well, it is less than that because we are depreciating the building and the fixtures.

Q. You say it is less because of the depreciation. What would you say its true value is, Mr. Fairbank?

A. Well, I would say it was that much or more. I think it's on my books at something around 80,000 now.

Q. But its true value, you say, is about \$150,000 or more?

A. I would say so.

Q. Do you now own the land?

A. No, sir.

Q. Your store is across the street from Von's Store No. 5?

A. It is across the street from Von's. I am not sure of the number, but anyhow it is across the street and down a little ways.

Q. Is that store known as Von's-Shopping Bag?

A. No, I don't think so.

Q. You state, Mr. Fairbank, in Paragraph 11 of your statement, on Page 4, that the stores are known as "Von's [fol. 456] Shopping Bag."

A. Well, what I had reference to in that statement is all their ads say "Von's Shopping Bag."

Q. I see. Was the Von's store there when you built your store?

A. No, sir.

Q. When did it come in?

A. Well, that I am not sure of. It is five or six years later.

Q. What other stores of Von's Shopping Bag, as you put it, do you compete with?

A. The Shopping Bag at Stonewood, if you could call it competition. It is about two miles away.

Q. Do you call it competition?

A. Well, we class it as competition, yes. Anybody in Downey we feel is competition if they are a live merchant.

Q. What do you consider the draw area of your store?

A. Well, about, I would say, 65 per cent of it is within a radius of a mile and a half to two miles. The rest of it might extend as far as Whittier.

Q. Do you have a lot of friends in Whittier?

A. No, but we have self-service—I mean we have service meats, which very few people have.

Q. That is quite a draw item?

A. That is a draw, yes.

[fol. 457] Q. Does the Von's store across the street have service meats?

A. No, sir.

Q. What is the size of your store?

A. Approximately 10,000 square feet.

Q. Do you run the meat department?

A. I do.

Q. Do you run the liquor department?

A. No, sir.

Q. Do you lease that out?

A. I do.

Q. Do you run the produce department?

A. No. I lease that out also.

Q. Your statement says in Paragraph 1, that you had sales of \$1,200,000 in 1959 in your store. Does that include the produce and liquor departments?

A. That includes everything under the one roof, yes.

Q. Is your store in a shopping center?

A. It is.

Q. Will you describe what other stores are in the shopping center?

A. Well, there is a restaurant, doughnut shop, drug store, barber shop, a youth shop, apparel shop, coin store

—coins and stamps—a dry cleaning establishment and a good will store.

[fol. 458] Q. What other stores are there within a mile and a half radius of your store?

A. Sav-On Drug—Are you talking about all types of stores?

Q. I am talking about grocery stores.

A. Well, there is All American, Ralphs, Shopping Bag, a couple of small independents. When I say "small," I mean four to five thousand square foot independents. Kenny Craun in the south end of town. Recently there is a Boy's Market in the south end of town.

Q. This is within a mile and a half radius?

A. I would say it was, yes.

Q. You indicated earlier that you thought the Shopping Bag store at Stonewood was a couple of miles away.

A. Well, actually I have never clocked it on a car. It is between a mile and a mile and a half.

Q. Do you feel that you compete with all of these stores which you have named?

A. Yes.

Q. Do you own other property in the area of your store there in Downey?

A. I do.

Q. What is it?

A. I own the three lots east of the food market, which most of this other shopping center is on that we named. [fol. 459] I have a half interest in the bank-post office building across the street.

Q. When did you acquire those interests?

A. Well, since I have acquired the market corner. One of them at a time.

Q. You say your business has been successful?

A. I would say on a moderate scale it has.

Q. Paragraph 2 states that you check the ads and read the various trade publications. You list Commercial Bulletin, Super Market Merchandising and Progressive Grocer.

A. Yes.

Q. Are there any others?

A. Only very occasionally if they mail me a free copy or something.

Q. By Super Market Merchandising do you mean Super Market news?

A. Yes.

Q. You don't take the Southern California Grocers Journal?

A. No. I used to but I don't any more.

Q. Do you sometimes go into the Von's store across the street and check their prices?

A. Occasionally. We have somebody in there every week. It is not always me but we do have somebody in there every week.

[fol. 460] Q. And you are acquainted with the manager there?

A. Well, just on a speaking acquaintance is all.

Q. And I guess he comes in your store and checks your prices?

A. Either he does or somebody else.

Q. Are there any other stores in the area where you go in and check prices?

A. Well, occasionally we check the Safeway, but not near as often.

Q. How far is Safeway?

A. That I left out when I was naming those to you there. They are within the mile radius too. They are west on Florence.

Q. Is that a newer store than yours?

A. That is a brand new store within the last year and a half.

Q. You named Von's and Safeway that you go in and shop. Any others?

A. Not very often. Once in a while All American, and if there is a doubt about a price in another store, why, we would go in and check it.

Q. What is the purpose of that, Mr. Fairbank?

A. Well, if we have a constant—I wouldn't say complaint, but somebody telling us that we are two cents out of line on coffee, or an item like that, that they [fol. 461] could buy it at another store for two less, regular shelf prices, then we would go and check their shelf price.

Q. On some occasions do you have a lower shelf price on a particular item than a Von's or a Safeway?

A. We hope to have on occasions.

Q. Do you feel that you have greater flexibility in doing that by reason of being a single store operator?

A. You mean on their shelf price or advertised price?

Q. Shelf price.

A. No, I don't think we would have any more flexibility on shelf price.

Q. Would you on the advertised price?

A. We would inasmuch as I think it is a law that they have to have them in all stores if they advertised them.

Q. If you want to change a price on a particular item you can make that decision the night before your advertising goes to press, can't you?

A. Yes, I think we could.

Q. How would you, on the basis of your study of the industry, feel that the manager of the Von's store would be able to make such a determination?

A. Well, I don't believe he could unless he had special permission from the district manager.

Q. In other words, a chain has a long chain of command and it doesn't really have the flexibility of the [fol. 462] single store operator, does it, Mr. Fairbank?

A. No, I wouldn't think it would in that sense, anyway.

Q. You say you have been in the grocery business for five years and Paragraph 3 states that on the basis of your continued study of the industry you can testify the number of single store retailers has declined. That is in the last five years?

A. That is based on the survey that I was shown and also—

Q. What survey was that?

A. That the Federal attorneys had. But I think it's common knowledge in the industry too.

Q. Would you describe this survey you were shown?

A. Well, it was a survey put out by—

Q. The State Board of Equalization?

A. I wouldn't say whether that is what it was or not until I look here.

Mr. Coyle: Paragraph 3, Mr. Fairbank.

The Witness: Yes.

Mr. Alsup: Q. When you say it was based on that sur-

vey then you added, "It is common knowledge in the industry." Where did you learn it, aside from the survey you were shown by the government attorneys?

A. Well, through the fact that I have been in the [fol. 463] food industry for 35 years. I have several locations that I know of that went out of business, not particularly in the last five years but in the last ten.

Q. And you know some that have opened up, like yourself, don't you?

A. Not too many. If you asked me to name some I don't know that I could name too many that have opened in the last ten years, independents.

Q. Well, in 1958 you and your son opened up a second store out in Trona, didn't you?

A. It was already in operation, we just took it over. It is five years in the one spot before we took.

Q. That was an acquisition?

A. Yes, sir.

Q. When you took over your second store that caused the decline of one in the number of single store operators, didn't it, because you are now a two-store operator?

A. In a sense, but not in a sense either. It's another corporation entirely.

Q. On the basis of your studying the industry, Mr. Fairbank, do you know how many stores A & P had, say back in 1940?

A. Are you talking about in Southern California?

Q. No; in the nation.

A. No, I don't. I know about how many they had in [fol. 464] Southern California.

Q. How many did they have?

A. About seven.

Q. How many do they have now?

A. That I couldn't be sure of. I know they have opened a couple of new ones. They opened one last week. I could say that they are the largest in the world, I guess.

Q. Would it be your impression, based on your study of the industry, that this decline in the number of retailers that you have mentioned is largely the small mom and pop store?

A. Well, when you say "momma and poppa," you mean what?

Q. The tiny stores that you referred to earlier.

A. If you go under 12,000 square feet I would say that, yes.

Q. In the same period that you have been observing the industry you have seen a number of other concerns start up and grow and be successful and expand, haven't you?

A. Yes.

Q. Can you name some of those?

A. Yes, I could. Hughes for one.

Q. They got started in 1952?

A. About that time.

[fol. 465] Q. And what others?

A. Then I might tell you that Eddie Fox started and wasn't so successful. Well, I think Von der Ahe's have grown tremendously since '52.

Q. I am talking about people who have started their own chains, Mr. Fairbank.

A. Well, outside of Hughes there likely is more but he is the only one that I am personally acquainted with.

Q. Are you acquainted with Mr. Barondess, who is one of the government's witnesses?

A. No.

Q. You don't know whether he started after 1952?

A. I never heard of the man.

Q. Are you acquainted with Mr. Carpenter, who is scheduled to testify today?

A. No.

Q. You don't know whether he started since 1952?

A. No, I don't.

Q. Are you acquainted with Ted Wood of the Pantry Markets?

A. No. I know of him but I am not acquainted with him.

Q. Do you know when they got started?

A. No.

Q. Are you acquainted with Joe Goodnight of Michael's [fol. 466] Markets in Orange County?

A. No.

Q. You don't know when he got started?

A. Going back to the Pantry Markets, is that a private concern or a corporation?

Q. It's a chain that is incorporated.

A. It is a stock selling chain, isn't it?

Q. I don't know if it is stock selling, Mr. Fairbank. Can you think of others that have been able to start in the business and been successful?

A. I can't think of any offhand that have started and grown that I personally know except Hughes. I am very well acquainted with Orville Fallon, who has Orville's Markets. He had three when I was his meat operator and then he expanded it to four or five and he is back down to three again.

Q. And Eddie Fox, who you mentioned, started out in '54 and built himself a very large chain, didn't he?

A. Yes, he did. But he didn't pay his bills.

Q. He expanded much too rapidly, isn't that right, and he went into bankruptcy?

A. He actually didn't start in '54. I worked for Eddie Fox in '30.

Q. He started the Fox Markets in 1954?

A. He might have started another chain that he went [fol. 467] under another name with. But I think he was supposedly the leading stockholder in Mayfair at one time, wasn't he?

Q. How about McDaniel's, did they have much the same experience as Eddie Fox?

A. Really, I don't know. I know they sold their chain out.

Q. Wouldn't you learn these things about McDaniel's and Fox from your study of the trade papers?

A. You mean why they are out of business?

Q. Yes.

A. Yes, I think it was common knowledge in the industry why they are out of business.

Q. What is that?

A. Because they couldn't pay their bills.

Q. And that is another case of a chain that expanded too rapidly, isn't it?

A. That's right.

Q. How about Yor-Way?

A. Well, I guess they are still in business. There are none of them in my locality so I am not sure.

Q. Don't you know from your examination of the trade papers, Mr. Fairbank, they went into bankruptcy too?

A. No. I didn't examine it that close.

Q. In Paragraph 4 you refer to the shopping center situation and you say single store operators cannot get [fol. 468] into the more desirable shopping centers and you refer to your own unsuccessful attempts. Would you describe those?

A. Well, I have a friend who opened one of the largest housing projects in Orange County. I say he is a friend, he is a mutual acquaintance. I went to him and asked him to let me have the food market in the shopping center, which covered 13 acres, and he was very frank to tell me that he couldn't because he had to have a tenant with a triple A rating in order to finance the building to put it in.

Q. What is the name of this friend?

A. Since you ask me, I can't recall his name.

Q. We can leave a blank, Mr. Fairbank.

A. I can get it for you.

Q. You can fill it in.

A. Louise Laramore.

Q. Are you aware of the bills that have been pending in Congress to give financial assistance from the Federal Government to the small operators who would like to get into shopping centers?

A. Well, I have read something about them. That is about as much as I am aware of them.

Q. There is quite a bit about them in these trade papers that you have studied?

A. If you made a study you likely would. I haven't [fol. 469] gone into studying that because actually I feel that primarily the man that is opening the shopping center wants somebody where he can go out and get practically 100 per cent on his money if he builds the building. Now, if the government would back it up you could get it. I haven't talked to anybody—

Q. You would be in favor of the passage of those bills, I take it?

A. I think it would be a fine thing. As far as I am concerned myself it wouldn't make any difference.

Q. Would you explain, Mr. Fairbank, how the merger of Von's and Shopping Bag made any change whatsoever in the shopping center situation you describe in your Paragraph 4?

A. Well, now, I don't know that this particular merger made any change in this Paragraph 4. I think this thing was going on before—this condition existed before they merged.

Q. Both Von's and Shopping Bag had triple A credit ratings, didn't they?

A. That I couldn't be sure of. I think maybe Von's did. I don't know that Shopping Bag did.

Q. It brings up another question which I was going to ask you later. In Paragraph 9 you state that both Von's and Shopping Bag were profitable operations. What was the knowledge that formed the basis of that statement, Mr. [fol. 470] Fairbank?

A. Well, the knowledge that I have on the Von's is strictly on their stock reports and what they pay for their shares that are out. I think that is actually a pretty good yardstick of how successful anybody is. Now, I don't know—I couldn't tell you exactly what Shopping Bag paid on their shares, if they had any out even.

Q. Do you really know if Shopping Bag was a profitable operation?

A. You mean to take oath that they were a profitable organization?

Q. Yes.

A. No, I don't.

Q. That is what I am asking you to do. We were told this is what you would testify to and that is the reason I am asking you this question.

A. On the surface they were a successful operator.

Q. I suppose back in 1950 you would have said the same about Eddie Fox, wouldn't you?

A. No, I wouldn't, since he has owed me a labor bill since about '30.

Q. Didn't his chain give the appearance prior to its bankruptcy in 1961 of being a very successful operation?

A. You mean to a customer that was shopping or somebody that was in the industry?

[fol. 471] Q. To someone in the industry.

A. I don't think it did.

Q. How about McDaniel's?

A. No, it didn't either.

Q. How about Yor-Way?

A. There is one that I don't know anything about.

Q. Why do you say that McDaniel's did not give the impression of being a successful operation?

A. Well, it was common talk among the industry that they couldn't pay their bills.

Q. Commencing when?

A. Well, that I couldn't say exactly.

Q. Based on your study of the industry, Mr. Fairbank, isn't it true that in the years '59 and '60 both Fox and McDaniel's opened up a large number of new stores?

A. Well, maybe they did, but I think it was through prior obligations that they had.

Q. You feel you have more information about Shopping Bag so that you could say Shopping Bag was a profitable operation?

A. No.

Q. You don't?

A. The only thing is that there was never any talk in the industry that they weren't paying their bills.

Q. Paragraph 5 says that you have observed the [fol. 472] decline in the number of grocery stores in the area which arises also from the increasing size of supermarkets and their large, continually expanding dollar sales. The supermarkets are not an exclusive province of the chains, are they, Mr. Fairbank?

A. No.

Q. I wish you would explain for the record how the merger of Von's and Shopping Bag in March of 1960 had any effect whatsoever on what you describe in Paragraph 5.

Mr. Coyle: I want to make a point there, Mr. Alsup. The witness in Paragraph 5 didn't say there was any connection between the increasing sales of supermarkets and the decline of the number of grocery stores and this acquisition. He is just stating a fact in Paragraph 5.

Mr. Alsup: If the witness wants to state let him so answer.

The Witness: What do you want me to answer?

Mr. Alsup: Q. Did the merger of Von's and Shopping Bag have any effect whatsoever on the matters you refer to in Paragraph 5?

A. No, I don't think it does.

Q. Paragraph 6, Mr. Fairbank, says that you would testify that single store operators and small chains do not have their own highly developed distribution system. Does the single store operator need a highly developed [fol. 473] distribution system?

A. I think it would help toward the profit structure.

Q. What do you mean by "highly developed distribution system"?

A. Well, there are several things that you could take into that. I don't think there is any doubt in anybody's mind that is in the food business that there is more profit made in the dairy part of the industry than likely any other part that we operate from, dairy and bakery industry.

Q. Is that what you refer to when you say a highly developed distribution system?

A. Partly, yes.

Q. What else?

A. Well, we might take, for an example, on an ad item I think that there is no doubt that most any of the chain stores that have their own warehouses and own distribution system has the ad item in their warehouse before they advertise it. In our particular organization where we buy through a co-op we have to hope that the co-op has the ad item in.

Q. You are a member of Certified Grocers, aren't you?

A. Yes, I am.

Q. Doesn't Certified boast that it has the most efficient electronic data processing system in the world [fol. 474] and the most efficient distribution system?

A. I think maybe they do, yes.

Q. Does a single store operator or a small chain need a large warehouse?

A. Well, we need a larger warehouse than the chain store would need where they have direct shipments.

Q. Do you need a fleet of trucks?

A. From an operating standpoint we couldn't afford to have a truck with a single operation.

Q. Your conclusion in this Paragraph 6, Mr. Fairbank, is that large chains, such as Von's and Shopping Bag, operate large warehouses, are serviced directly, and can buy in heavy volume, and this gives chains such as Von's

and Shopping Bag an advantage over independents and small chains in terms of inventory control. What do you mean by that?

A. In the produce and dairy part of the industry I have reference to.

Q. You don't run the produce department, do you?

A. No, not in this particular store we don't.

Q. In the dairy department how does the warehousing and the trucking assist Von's in inventory control?

A. Well, I think they likely—they have their own direct dairy that is owned by a group of the chains. I don't mean Von's-Shopping Bag by itself. I think they likely [fol. 475] have a finer distribution than the independent does if he buys from one of the national dairies.

Q. From what dairy do you buy?

A. We are buying from Golden State-Foremost right now and Knudsen.

Q. And would you say that Foremost and Knudsen products have more or less public acceptance than Jerseymaid?

A. About the same, I would say.

Q. Are they more or less advertised?

A. Well, that I couldn't say. I know I run straight into one of Jerseymaid's big board signs on the road up here but I didn't see any of Foremost or Knudsen. How much they are spending for advertising, I don't know. I think Knudsen is likely the best accepted of any of the dairy products. If it wasn't I don't believe that Von's and the rest of the chains would have it in there.

Q. The price of milk that you sell is fixed by state law; isn't that right?

A. Right.

Q. Would you tell me what competitive advantage Von's gets out of membership in owning a part of Jerseymaid?

A. I don't think there is any doubt in the industry that the dairy industry is the biggest discount part of the industry.

Q. That is it's a profitable operation?

[fol. 476] A. That's right.

Q. The dairy companies make a lot of money?

A. I think so.

Q. You feel that gives Von's a competitive advantage because it is a member of Jerseymaid?

A. Right.

Q. Do you feel that you have a competitive advantage over others because of your real estate ownership of the bank and the post office?

A. You mean in the market operation?

Q. Yes.

A. No.

Q. Do you know whether Von's gets a better return on its investment in Jerseymaid than it would if it had an investment in some common stock?

A. I don't know it but I feel I would if I had an investment in it.

Q. You don't know?

A. No, I couldn't make a statement to that effect.

Q. There are other cooperative dairies that various retailers belong to, aren't there?

A. There might be, but there is none that I know of.

Q. Don't you know of Golden Creme from your study of the industry?

A. We have never had anything to do with Golden [fol. 477] Creme.

Q. You never sought membership in Golden Creme?

A. No, sir.

Q. You don't know that a large number of retailers belong to Golden Creme?

A. No, I don't.

Q. Does Certified Grocers operate large warehouses?

A. They do.

Q. Are they serviced directly by railroad shippers?

A. Would have to be, yes, sir.

Q. And does Certified operate large trucking facilities?

A. They do.

Q. Does Certified buy in greater volume than any of the chains doing business in this area?

A. I would assume they do. I don't know that they do but I would assume that they do, unless it would be Safeway.

Q. Would you describe some of the services that Certified renders to its members such as you?

A. Well, they fill our wholesale grocery orders and frozen food orders and deliver them.

Q. Is that all?

A. That's about all that we have anything to do with them with. We buy our Blue Chip stamps through them.

Q. You don't use any of their men for assistance in [fol. 478] advertising layout?

A. No, sir.

Q. Or for electronic data processing?

A. No, sir. I believe they have the service but I don't use it.

Q. Do they have a service to help their members get equipment financing?

A. Within the last 15-20 days they do have, yes, sir.

Q. Are you able to get insurance through Certified at a cheaper cost?

A. Yes. But I don't believe it is Certified. It is an organization run in Certified's office but it doesn't belong to Certified.

Q. But it is available through your membership in Certified?

A. It would be available if I wasn't a member of Certified.

Q. If I asked you the same questions about Orange Empire would your answers be the same?

A. If I could answer them they would. I don't have much to do with Orange Empire myself. My son runs that organization in Trona.

Q. From your constant study of the industry aren't you able to give an opinion at all on Orange Empire?

A. Yes. I think they are a good organization. They [fol. 479] are not quite as competitive as Certified in some sense.

Q. Do you have any knowledge on the basis of your study of the industry, and your membership in Certified, as to the growth of Certified in membership and in volume of sales in the last ten or twelve years?

A. Well, I don't have any figures that I could give you on it. I know they have made a tremendous growth.

Q. Both in members and in volume; isn't that right?

A. That's right.

Q. What about Orange Empire?

A. The same thing holds true.

Q. Turning to Paragraph 6 again, and reading it, if you will, Mr. Fairbank, would you please tell me what, if any-

thing, that is contained in that Paragraph 6 has been changed or affected as a consequence of the merger of Von's and Shopping Bag in 1960?

A. Well, the only thing that I might say that has been changed since the merger is that they eliminate dual heads in the organization by combining it into one. I mean they don't need two supervisors in one area. One supervisor can operate it. Certainly they have had a big advantage in their advertising structure. We will all admit that.

Q. An advantage over the independents?

A. An advantage over what they had before they merged.

Q. They saved some money in their advertising?

[fol. 480] A. About 50 per cent, yes.

Q. What advantage does that give them over the independents and small chains in terms of inventory control?

A. Well, that doesn't give them any advantage as far as inventory control.

Q. Isn't that what you say in Paragraph 6?

A. I would say that if they only had to run one warehouse for a combination of the two chains they certainly could have less inventory control than they could with two warehouses for two chains.

Q. You say if they had two. Do you know whether they do?

A. No, I don't. I am assuming they have only one.

Q. You say in Paragraph 9 that you would state in your testimony you observed the operation of Von's and Shopping Bag prior to the merger. Am I to conclude you haven't observed them since the merger?

A. You mean on the basis of what they are doing inside of their organization?

Q. Yes.

A. I don't know exactly what changes they have made as far as their key personnel is concerned. I know that Mr. Ward, who was with them, is not with them any more, who I used to run into quite frequently.

Q. Do you know he got a much better job with Food [fol. 481] Giant?

A. Yes, I do.

Q. Is that one of the disadvantages that the large, successful chain has, that they have most of their key personnel raided?

A. Most any of us has a chance to lose their key personnel.

Q. I am still puzzled, Mr. Fairbank, and I would like to go over it with you again with respect to the advantage of the chains, the larger chains, in terms of inventory control. You have mentioned milk.

A. That they don't warehouse, I don't believe. My thought on that was not that it went to their warehouse.

Q. You don't warehouse your milk?

A. No, we don't. Only just two days' supply, we might say.

Q. I would like to know——

A. When I spoke in terms of advantages in warehouse, I meant in dry groceries.

Q. So far as you know the merger had no effect whatsoever on that; is that correct?

A. You mean that I could say bookwise?

Q. Yes.

A. No, I am not in a position to say that.

Q. What other advantages in terms of inventory control [fol. 482] were you referring to in that Paragraph 6?

A. If you were operating two chains and you consolidated them into one, or even if you were operating three stores in one chain and three in another, and you consolidated them into one, you would likely, as soon as you could, consolidate your warehouse.

Q. That is it would be more efficient and you might make some savings; isn't that right?

A. Right.

Q. Now tell me what competitive advantage that gives you.

A. So if you were going to make a buy, we will say on tuna, you would buy it all in one warehouse and distribute it from there. You wouldn't say, "Give me 2,000 cases of tuna for one warehouse and 2,000 cases for another," because maybe you would only sell 3,000 altogether and you would have a surplus of a thousand where you could replace it.

Q. How does Certified Grocers handle that situation?

A. I think they handle it right from one floor.

Q. Is that all you had in mind in terms of inventory?

A. That is the type of thing I had in mind.

Q. Give me some more examples.

A. You could take the same thing on toilet paper, you could take the same thing on Kleenex. You could take it on any common commodity that you are selling in all these [fol. 483] stores. You could take it on tobacco.

Q. Did Shopping Bag have that advantage prior to its merger with Von's?

A. I don't know. I don't think so.

Q. It did not?

A. You mean of the combination of two buying out of one warehouse for the both stores?

Q. Didn't Shopping Bag have some 38 stores before its merger with Von's?

A. Yes, they did.

Q. Your statement says the large chains have this advantage over the single store operators and small chains in terms of inventory control. I am asking you, did Shopping Bag have that advantage prior to the merger with Von's?

A. I don't know.

Q. Did Von's have that advantage prior to the merger with Shopping Bag?

A. You mean over the one single independent?

Q. Yes.

A. I would think they did have.

Q. That is you don't know if Shopping Bag, a 38-store chain, had that advantage but you think that Von's, a 28-store chain, did?

A. I would assume that either one would have that [fol. 484] advantage over an independent store.

Q. What change in this advantage occurred as a consequence of the merger?

A. Well, if they combine their warehouse this is bound to be an advantage.

Q. Some savings?

A. Yes.

Q. That is what you are referring to?

A. That's right. Wouldn't the savings be an advantage?

Q. Would it be a competitive advantage?

A. It should be.

Q. In what respect?

A. What they could sell for less. If my advertisement

costs me one per cent of my gross volume and I could cut that down to one-half of one per cent of my volume, I could certainly sell to my customer less than I could before.

Q. Would you regard that as beneficial from the standpoint of the public or detrimental to the public?

A. It depends on how far it went.

Q. In this area, Mr. Fairbank, isn't it true that we had two national chains back in 1960, A & P and Safeway?

A. Right.

Q. And since then we have had another national [fol. 485] chain, Acme, come into the market?

A. The one that took over Fox, you mean?

Q. No; Alpha Beta. Were you not aware that——

A. Yes, I was.

Q. Since that time Food Fair, a national chain, has entered into the market by taking over the remaining Fox stores out of bankruptcy, haven't they?

A. Well, I guess they have. Alpha Beta took part of them. I don't know who got the rest of them. I know Alpha Beta had some of them.

Q. Do you know that?

A. Beg pardon?

Q. Is that so?

A. I know they took the one on Washington Boulevard, north and east of me.

Q. But from your study of the trade papers in the industry are you not aware that the trustee's plan of reorganization has been approved whereby Food Fair will take over operation of the remaining 18 Fox stores?

A. No, I didn't.

Q. Paragraph 7, Mr. Fairbank, says that the large chains such as Von's and Shopping Bag belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Are you referring there, when you refer to cooperatives, to [fol. 486] Certified Grocers and Orange Empire?

A. Yes, I am.

Q. Does Safeway belong to Certified?

A. Not to the best of my knowledge. I don't know. They might but I don't think they are active in it.

Q. Does Von's?

A. I don't know whether they still maintain a membership or not.

Q. Do you know when they last had a membership?

A. No, I don't.

Q. Does Ralphs?

A. No, I wouldn't say they have a membership. They are not active in their buying through Certified.

Q. You say that these cooperatives, such as Certified and Orange Empire, do not carry fresh dairy, meat and produce. And here again—

A. And when I say "meat," I am referring to fresh meat.

Q. Yes, fresh meat. And perishable produce?

A. That's right.

Q. Here again the price of milk that you sell, or any grocer sells, is fixed by state law; right?

A. Right. But the ice cream is not.

Q. Has Certified announced plans to get into the ice cream business?

A. They have, as of today.

[fol. 487] Q. They are starting today but the plans were announced some time ago, weren't they, Mr. Fairbank?

A. Well, there was talk about a month ago.

Q. What effect has the merger of Von's and Shopping Bag had on this Jerseymaid situation that you refer to in Paragraph 7?

A. Well, I really don't know that it had any effect on it. Only inasmuch as I think they both bought from Jerseymaid before they merged.

Q. With respect to fresh meat you have had long experience as a meat market operator, haven't you?

A. About 30 years.

Q. Would you describe it generally?

A. You mean the meat operation?

Q. No. Your experience in running meat departments and meat stores.

A. Well, it's a lot of hard work, I want to tell you that. I operated as much as three meat markets at one time, from that down to one.

Q. That was over a period of about 25 years?

A. Well, since about 1927.

Q. Up until you started in the grocery business five years ago.

A. I was operating the meat department prior to that.

Q. Where do you buy your meat?

[fol. 488] A. We buy most of our meat from Ruchti.

Q. Are you the buyer?

A. No, sir; I am not right now.

Q. Who is your buyer?

A. Paul Goforth.

Q. Has he had long experience in this business of buying meats?

A. Well, he has been in the meat business about 25 years, maybe 20.

Q. When did you stop being the meat buyer?

A. About six years ago when I had a heart attack and the doctor told me to get out of the meat market.

(Discussion off the record.)

Mr. Alsup: Q. Various independent or single store operators have told me, Mr. Fairbank, that they can go to the meat wholesaler and buy in small quantities and can do just as well or better than the chains on quality. What has been your experience?

A. They might do just as well but not better.

Q. I have been told that sometimes a single store operator or a small chain can help a packer out by buying a small quantity of meat which a chain can't handle because of its necessity for large quantities. Has that happened?

A. I really don't know. The organization that we buy our beef from has no dealings, I don't think, with any [fol. 489] of the chains at all, unless it would be Market Basket. They might sell Market Basket a little but I don't think they sell any of the other chains at all.

Q. Do you have any knowledge as to whether or not you can get your meat at comparable prices to that of any of the chains?

A. Not from the organization that I am buying it from we can't. That is why they don't sell chains.

Q. Would you explain that a little further for me?

A. Well, according to what Bob Ruchti tells me, they feel that if they buy 20 or 25 cattle, or 50 or a hundred cattle at a time, that they should buy it for a cent to a

cent and a half less on the pound. And they don't want to do business with them on that account, along with the fact that he tells me that he doesn't want to put all his eggs in one basket. If he was to sell Safeway 200 cattle twice a week and then Safeway all at once decided to buy the 200 cattle some place else he would be sitting with his killing floor and no market for it. So he would rather sell to independents who buy three to five cattle a week every week.

Q. With your service meat department you emphasize quality meats, do you not?

A. Right.

Q. How do your prices on meat compare with those of [fol. 490] Von's across the street?

A. They are a little higher.

Q. The people are willing to pay a little bit more for the personal service?

A. Some are and some aren't. It depends on who the customer is. It is not proven that the majority are willing to pay more.

Q. But you are satisfied with your personal service policy?

A. We are. Along with the fact that we would have to have an increase of about \$2,000 a week in volume if we went to self-service to make it effective. You can't operate a self-service market on \$5,000 a week very effectively. Your spoilage is too great, and your package returns.

Q. With your experience in the industry, the meat industry, I gather you can keep your spoilage to a minimum; is that correct?

A. We do because we don't cut more than we are going to sell. But you can't do that if you are going to prepack it. You have to put it on an assembly line and run it through, so many of this and so many of that.

Q. You lease out your produce department, you testified. To whom do you lease that department?

A. To a Japanese fellow by the name of Nikamo.

[fol. 491] Q. Do you know where he buys his produce?

A. No, I don't. I know he buys it at the wholesale produce market but I don't know which purveyor he buys it from.

Q. Do you know how he does in comparison with the large chains in terms of price and quality?

A. No. I know he has the quality but I don't know about the price.

Have you talked to one of these Orientals and tried to get them to tell you anything about their business?

Q. Yes. And some of them have.

Do you know Yosh Inadomi?

A. No, I don't.

Q. In Paragraph 8, Mr. Fairbank, you refer to market share of the eight largest, the nine largest, the fifteen largest and the twenty largest chains. You state you are in agreement with the picture presented in Defendants' Exhibits, which you were shown, and so on. Were you shown the Defendants' Exhibits?

A. I was.

Q. What did those exhibits show about the market share of the top two?

A. Well, that I can't tell you without looking at the exhibits.

Mr. Alsup: Do you have them with you?  
[fol. 492] Mr. Hughes: I might.

Mr. Alsup: Q. While they are looking I will ask you a couple of more questions. Is there any reason why in this statement you picked out the top eight, top nine, top fifteen and top twenty and excluded all the others?

Mr. Coyle: Mr. Alsup, I think you better show the witness the exhibit. I think that is what the exhibit has grouped them in, the top eight, top nine and so forth.

(A short recess was taken.)

Mr. Alsup: Q. Government counsel have shown you, Mr. Fairbank, a document which is labeled "Percentage of total grocery store sales by various groups of chains in the Los Angeles metropolitan area, 1950-1960." Is this the document that you were shown by them?

A. This is one of them. We had other ones besides that, I am sure.

Mr. Coyle: The Department of Commerce, I believe, were the other ones.

Mr. Hughes: Most of them, I believe, were the government's.

Mr. Alsup: Q. As far as you know that is the only Defendants' Exhibit, although the statement says "exhibits"?

A. No, there was these percentages of failures which we went over too put out by the State Board of Equalization, weren't they?

[fol. 493] Mr. Hughes: Yes, they were.

Mr. Alsup: Q. But do you recognize the document which is before you now as the one that was shown to you?

A. Yes, this is one of the ones, yes.

Q. Would you tell me from that document what happened to the market share of the top three in the period 1950-1960?

A. Well, I would say that they took a decided down in '59. But there is a decided reason for that also.

Q. Yes. Well, compare 1952 with 1960, Mr. Fairbank.

A. Yes.

Q. "Yes" what?

A. They are down over 1952 too.

Q. What happened to the market share of the top four from 1952 to 1960?

A. It runs along about on the same graph.

Q. Are you looking at the dotted line?

A. Yes, I am.

Q. 1952 to 1960?

A. Yes. I would say it's maybe a little bit farther down in '59 in the top three.

Q. Perhaps you don't understand my question. Doesn't this chart indicate, Mr. Fairbank, that in 1952 the top four had roughly 27½ per cent?

A. Yes, I think it does.

[fol. 494] Q. Now based on your study of the industry, Mr. Fairbank, who has been the leader, in No. 1 position, in market share in this period 1952 to 1960?

A. When you ask that question do you mean who did the industry look to?

Q. No. Who had the largest market share, if you know?

A. Of volume?

Q. Yes.

A. I imagine Safeway.

Q. Do you know what has happened to their market share in this period?

A. No, I don't.

Q. Do you know what has happened to the market share of Ralphs during this period?

A. Well, I think they have likely, on the over-all picture, they have both increased because they have increased stores.

Q. This is speculation on your part and not based on any study?

A. Yes.

Q. Just speculating, Mr. Fairbank, if Ralphs and Safeway increased because of their number of stores how did the top three decrease from roughly 24 per cent in '52 to roughly 21 per cent in 1960?

[fol. 495] A. Well, I would like to know who the top four is before we get too far into this. I can't see it off of this graph here.

Q. You refer to the top eight in your statement. Perhaps you can tell me who the top eight are.

A. Well, I don't think there is any—Most any of us could go through the industry and pick out at least six out of the top eight without ever studying the graph.

Q. You pick them out.

A. Safeway, Ralphs, Von's, Food Giant, Shopping Bag, if you are going to take them separately or together, Market Basket. How many have I got so far?

Q. I ran out of fingers.

Mr. Bates: Six.

The witness: Likely Hughes would come along in about seventh or eighth and Thriftmart.

Mr. Alsup: Q. You mentioned Hughes. You earlier testified that Hughes got started in 1952; isn't that right?

A. Yes.

Q. You say now it would probably be within the top eight?

A. Volumewise I don't really know whether he would or not. I am thinking in terms of chains. Now, there might be some other chains that would be in there ahead of them. I don't think A & P would be in the picture in Southern [fol. 496] California.

Q. You regard them as an insignificant factor?

A. No, I don't. But I don't think they had enough stores to be in that category volumewise.

Q. Doesn't A & P have more stores than Hughes in Southern California?

A. I really am not sure, but I don't think they do have. I know they opened up a good sized one last week in Huntington Park, but I think it is about the first big one that they have opened in the last few years. Maybe a couple in the last three or four years.

Q. This chart that you referred to indicates that the market share of the top 20 declined from 1958 to 1960, does it not?

A. No. No, it doesn't show any decline, it shows an increase.

Q. From 1958 to 1960?

A. Oh, from '58 to '60? There was a decided decline there in '59.

Q. And '60?

A. '60 was on the road back up. It doesn't go to '60, actually.

Q. It goes a little beyond the middle, doesn't it?

A. Yes. The '60 line—there is a line drawn for '60 and it doesn't go that far.

[fol. 497] Q. That chart indicates that there has been a decline in the market share of the top 15 in that same period, does it not?

A. Only on this period where the strike was.

Q. It shows that the market share of the top nine was roughly comparable to 1960 to what it was in 1958; is that right?

Mr. Coyle: Mr. Alsup, there is no 1960 on the chart, as the witness pointed out a few minutes ago. The line doesn't go to 1960.

Mr. Alsup: It goes well into the year, as you know, Mr. Coyle.

Mr. Coyle: I am afraid it doesn't.

The Witness: You look at the chart again and I don't think you will find that there.

Mr. Alsup: The chart was based on these figures.

Mr. Coyle: He is talking about the chart.

Mr. Alsup: Q. Is it your testimony, Mr. Fairbank, that

the market share of the top twenty increased or decreased after 1958?

A. Well, according to this chart it decreased between '58 and '59, because that was the period we had the food strike. They were closed, they couldn't very well do business if they weren't open.

Q. If the market share was down in the year 1960 what [fol. 498] would you attribute that to?

A. The fact that they hadn't reclaimed their volume that they lost during the strike.

Q. How long did the strike last?

A. I can't remember exactly but it lasted quite a while.

Q. A month?

A. I don't know whether it was a month or not.

Q. When did it occur, in January of '59?

A. No, I don't think it was January. I think it was along in March but I am not sure. I am only basing it on March because I think that is when our contract comes due.

Q. You also state in this Paragraph 8 that when shown the reports of the Bureau of Census that these figures would corroborate your understanding based on your experience of the trends in the area. When you are referring to market share of the top eight did you include Fox?

A. I don't know whether he was included in that or not, to be honest with you.

Q. Would you have included McDaniel's?

A. No, I wouldn't.

Q. Would you have included Yor-Way?

A. No.

Q. When you refer to the top fifteen would you have included Fox, McDaniel's and Yor-Way?

[fol. 499] A. I would have included Fox.

Q. But not McDaniel's or Yor-Way?

A. I don't think I would have included Yor-Way. I don't think they ever had over five or six stores, did they?

Q. Well, you studied the industry, Mr. Fairbank.

A. I told you I didn't know anything about Yor-Way. There was none of them in my area so I wasn't worrying too much about them.

Q. Would you include Fox, Yor-Way and McDaniel's in the top twenty?

A. I think so.

Q. And there have been changes in the industry insofar as the shares of Fox, McDaniel's and Yor-Way, at least, are concerned?

A. Right.

Q. Each of those companies went into bankruptcy.

A. Some of them voluntarily and some of them otherwise, I guess.

Q. This Paragraph 8, Mr. Fairbank, states that on the basis of your continued study of the industry in this metropolitan area you are in agreement with the picture presented by these exhibits.

A. That is the study I have reference to.

Q. Yes. And you named the top one.

A. Whatever was shown on the chart as the top one.

[fol. 500] Q. Are you able to name the top twenty?

A. No. You mean just at random?

Q. Yes.

A. No.

Q. Or the top fifteen?

A. I wouldn't be sure I could name the top fifteen.

Q. Or the top nine?

A. I think I could likely name the top nine unless they have changed.

Q. At the present moment you could name them?

A. Well, I don't know that I could because I haven't seen any statistics on their volume.

Q. Isn't it true, Mr. Fairbank, that in this period, Hughes you gave us as an example, there have been changes in the make-up of the top five, six, seven, eight, nine, ten and so on?

A. You mean some increases in volume or increases in stores?

Q. No. Changes in the identity of the firms who make up the top eight.

A. Well, I imagine there has been since this Eastern organization came in and bought one of them, yes.

Q. You included Hughes as in the top eight?

A. Well, now, I didn't include them. I said I assumed he would likely be along about eighth or ninth.

[fol. 501] Q. And Hughes wasn't even in existence in 1948, was it? That is Hughes Markets.

A. I don't know. He likely was in existence, but whether

he operated Hughes Markets or not I imagine he was in the food business at that time.

Q. Well, based on your knowledge of the industry you know he was with Thriftmart, don't you?

A. No. You are going a little far on this based on the knowledge of the industry. I don't propose to be an authority on the industry.

Q. I see.

A. Only in my own area where I am not operating. If you ask me something about the store across the street from me or the stores in the immediate town I am in, naturally I read these papers and you get what's in the paper if you read it.

Q. Would this be a correct statement, you consider your immediate competition and you are not concerned with the broad over-all picture?

A. I am concerned. I am concerned with the amount of income tax that you and I pay, in a sense.

Q. But you regard your competitive area as these stores which can draw the same customers as you draw; isn't that right?

A. Right.

[fol. 502] Q. From your study of Von's and Shopping Bag, your observation of the operation prior to the merger, can you tell me in what section of the area the Von's stores were primarily located?

A. You mean of my immediate area?

Q. No. Of the Los Angeles metropolitan area.

A. Mostly Los Angeles County and some in Orange County.

Q. Isn't it a fact, Mr. Fairbank, that most of the Von's stores were located in the west and south areas?

A. No. I think their No. 1 store is likely over here on Vermont Avenue.

Q. You don't regard that as in the west?

A. I wouldn't regard that as West Los Angeles, no.

Q. I wasn't referring to West Los Angeles. Just the western part of this area. Would you regard the Shopping Bag stores as having been located primarily in the east and northern section of the Los Angeles metropolitan area?

A. On the origination of their chain, yes.

Q. You said in Paragraph 9 you observed the operation of Von's and Shopping Bag prior to the merger.

A. Yes.

Q. Did Shopping Bag have any stores located, say west of Spring Street where we are now sitting?

A. That I don't know. If they did I didn't observe any [fol. 503] of them. The stores that I observed was the stores next to me.

Q. And that is what you were referring to then in this Paragraph 9 when you talked about observations of the operation of Von's and Shopping Bag prior to the merger?

A. Right.

Q. Do you know from your study of the industry, Mr. Fairbank, how many single store operators there are in the Los Angeles metropolitan area?

A. No.

Q. Would you say it is several thousands?

A. Yes, I would.

Q. Would you tell me how many small chains there are in the area?

A. Do you classify an operator with two or more a chain?

Q. Well, let us take that definition.

A. I wouldn't have any idea how many there is.

Q. Would you say several hundred?

A. No.

Q. Would you say a hundred?

A. Yes, I would say there is a hundred. I am guessing at it now. There is no authentic way for me to tell you.

Q. Paragraph 10 states that you would state that Von's [fol. 504] and Shopping Bag, Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant were among the leading firms in the area. Are there any others that you would put in the category?

A. Are you talking about volumewise or efficiency of operation?

Q. I am talking about how you use the phrase in Paragraph 10, Mr. Fairbank. You explain it.

A. The way I use this phrase was volumewise. I wouldn't know of any other ones to put in the category unless you would want to include A & P, who is now in the growing stages in Southern California.

Q. Then are these the major chains that you are referring

to in Paragraph 14 when you say that if a merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains?

A. Yes, they are.

Q. Would you tell me what the basis for your assumption—I assume that is an assumption, isn't it?

A. Yes, it is.

Q. What is the basis of your assumption that Ralphs will merge?

A. Well, I don't know that Ralphs will merge but I think it is common talk in the industry that All American will [fol. 505] merge with one of the larger chains.

Q. All American has been in financial difficulty, has it not, Mr. Fairbank?

A. Well, I am not in a position to say they have been. It is talk that they are.

Q. From your study of the industry and your reading of the trade papers haven't you observed that they have had to sell off a number of stores?

A. I don't think they have sold any of their good stores.

Q. That doesn't answer my question.

A. I know they have sold a couple they figured were lemons.

Q. What is the basis for your assumption that Safeway will merge?

A. I don't think Safeway would merge with any of the local chains.

Q. How about Market Basket?

A. I think they likely will if given an opportunity.

Q. What is the basis for that statement?

A. Well, it is common talk among the industry that they are in financial trouble too.

Q. And on the basis of that you feel that they might seek a merger; is that correct?

A. Yes.

[fol. 506] Q. How about Thriftimart?

A. They seem to be a very successful operator.

Q. You don't anticipate that they will engage in a merger with one of the other major chains?

A. No.

Q. How about Alpha Beta?

A. I think they already have, haven't they?

Q. In Paragraph 14 you refer to mergers between and involving the other major chains.

A. Well, I didn't mean that all of these chains were going to merge to one right away. I didn't have any——

Q. Did you mean that any of them would merge?

A. I think they would if they had the opportunity.

Q. Would you name which ones and give me the basis for your opinion?

A. All American or Market Basket, either one.

Q. All American isn't listed in your Paragraph 10?

A. No. But they are one of the chains. I imagine they would be among the top twenty.

Q. I thought you earlier told me, Mr. Fairbank, that the chains you list in Paragraph 10 are the ones that you are referring to in Paragraph 14.

A. You mean that might merge with somebody; is that what you are talking about?

Q. With one another.

[fol. 507] A. No.

Q. Would you say that Paragraph 14 is largely surmise and speculation on your part?

A. What part of it do you have reference to?

Q. Well, we will take up the part we have been questioning you about so far about mergers.

A. Well, the only merger I talk about in 14 here is the merger between Shopping Bag and Von's.

Q. You said at the beginning of Paragraph 14 that you would testify that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains. And you told me that the major chains you were referring to are those you listed in Paragraph 10.

Mr. Hughes: I don't believe he did.

The Witness: I don't know whether you are switching this around to where you want me to say that I think Safeway is going to merge with somebody else, or something like that. But that isn't the opinion that I had.

Mr. Alsup: Q. Let us get back. Your statement with respect to Paragraph 14 is largely surmise and speculation, is it not, Mr. Fairbank?

Mr. Coyle: Mr. Alsup, you are putting words in his mouth. It is a conclusion that he has reached. It is not surmise at all.

[fol. 508] Mr. Alsup: Q. You gave me the basis of your conclusion. Do you agree that it is surmise and speculation?

A. I would say this, that I think if this merger is allowed that there will likely be more mergers to follow.

Q. You give me the basis for that conclusion.

A. For the efficiency of the operation.

Q. Anything else?

A. There might be a lot of things but that would be enough to cause a merger in itself if you could operate much more efficiently.

Q. Anything else in your mind when you agree to this statement in Paragraph 14?

A. No, I don't think so. And I don't think I had any particular chain in mind when I made that statement that they would merge with somebody else.

Q. In Paragraph 12, Mr. Fairbank, you state that you would testify you face very vigorous competition from Von's. Is that a correct statement?

A. That is.

Q. Was that true before the merger?

A. Yes.

Q. That has been true after the merger?

A. Yes. It hasn't changed any.

Q. In Paragraph 13 you state that there have been a number of other acquisitions and consolidations in the [fol. 509] retail grocery field since 1948. One acquisition we know about, that is Von's and Shopping Bag. And another one we know about, that is your acquisition up there in Trona; isn't that right? What others did you have in mind?

A. Well, I think Food Giant has acquired some real good stores. I don't think there is any denial of that. I think maybe Alpha Beta has acquired a few stores that are good that they didn't have and they didn't open.

Q. When?

A. Since Fox took voluntarily bankruptcy.

Q. What others?

A. That's all that I can name right offhand.

Q. That is all you had in mind—

A. I didn't have in mind, particularly, my own store because actually we operate that under two separate companies entirely.

Q. You have made no particular study, I gather, of mergers which may have occurred since 1948.

A. Only in the sense that we operated—that I did at one time operate a third store in Downey which gave us what we could classify as a chain store operation, as far as the bread industry was concerned, which entitles us to open credit which we are not entitled to with one single operation. It gives us a little bit of an additional discount that we weren't entitled to with the single operation.

[fol. 510] Q. Would you turn to Paragraph 14 and tell me what you had in mind when you say that a few large grocery chains will dominate the business?

A. I think they are dominating it right now.

Q. What is the basis for that opinion?

A. Based on the volume that is done in Southern California.

Q. Is it possible, in your opinion as a student of the industry, Mr. Fairbank, for any chain to dominate this market in the face of Certified Grocers and Orange Empire?

A. I don't think there will ever be a time when we will eliminate every independent, if that is what you mean.

Q. I don't think anyone is going to eliminate you, do you?

A. Yes.

Q. Describe and name the few large chains which will dominate the business.

A. Food Giant, Von's, Ralph's, Safeway, and I think if we have our health and God permits, we will see that Alpha Beta—I mean that A & P will be a big factor in the food industry in the Southern California area.

Q. When you use the term "big factor," are you using it in the sense of dominating the food business?

A. Yes.

Q. Yet isn't it true that at the present time the top 20 [fol. 511] chains still have slightly only more than 50 per cent of the total grocery business in this area?

A. Well, according to the survey here they have about 55 per cent—54 in 1959. I imagine they have more than that now if you was to take a present survey.

Q. When was it that you started operating your own store, '57?

A. Right in about there, yes.

Q. And yet they had in 1957 over 50 per cent of the business.

A. Well, a small amount over 50 per cent.

Q. That didn't discourage you from starting to run your own store, did it?

A. It wasn't a question of starting to run it. I already had my money in there, I couldn't help myself.

Q. And you know of quite a few others, don't you, that have entered the business since that time?

A. I might say that it certainly discouraged the man that was running my grocery store. He wanted out immediately.

Q. You told me your store had been a successful operation for you.

A. That's right.

Q. In the grocery business, Mr. Fairbank, as in any other business, I suppose that you would agree that there [fol. 512] are people who are good operators and there are people who are bad operators; isn't that right?

A. Right.

Q. Has it been your experience that most of the bad operators eventually go out of business?

A. Not always so.

Q. Some of the bad ones cling on.

A. Would you like me to explain what I am thinking?

Q. Yes.

A. If I had 25 eggs and one was bad I could still exist with the 24 but I couldn't if I had only one egg and it was bad.

Q. That's right. You understand, don't you, Mr. Fairbank, that this case doesn't involve an attack on chain stores as such?

A. No, I realize that. And I am not picking on the chain stores as such. Really I am not picking on anybody, only I do feel that if mergers are allowed it won't be long until

we will have a setup like some places in the East now where there is one independent in the town and five chains.

Q. Weren't people saying that in this area back in 1930, Mr. Fairbank?

A. Well, I don't know whether they were or not. About 1930 I was so busy trying to make beans that I didn't have much chance to listen to anybody else.

[fol. 513] Q. Weren't you aware of the large consolidations that put Safeway together here in the early thirties?

A. No.

Q. Did you know what market share Safeway had in 1930?

A. No, I didn't.

Q. Do you know when Von's commenced doing business?

A. Well, it was between '30 and '40, I think.

Q. Do you know when Market Basket commenced doing business?

A. No.

Q. Wasn't it during that same period?

A. I really wouldn't know.

Q. How about Shopping Bag?

A. I wouldn't know. About 1930 I was just interested in one thing, selling enough pork chops to feed two kids I had.

Q. I would say you have been a successful man, Mr. Fairbank, and I congratulate you.

A. Sixteen-eighteen hours a day you can accomplish a lot of things.

Q. That's right. A grocer has to work like a lawyer, I am told.

You state in Paragraph 14 that this merger is a major stride in increasing the market share of the large chains. [fol. 514] How much business did this merger increase the market share of Von's?

A. Figurewise, you mean?

Q. Yes.

A. I couldn't tell you without looking at actual figures. You likely know that without asking me.

Q. Did it increase the market share of Safeway?

A. What do you mean now?

Q. Well, did this merger of Von's and Shopping Bag

increase the market share of Safeway or Ralphs, or any other company?

A. You are going to have to explain that to me.

Q. You explain to me what you meant here. You say this merger is a major stride in increasing the market share of the large chains. What did you mean by that?

A. Well, if you consolidate two chains with 35 or 40 stores apiece into one it certainly increases the market share of the one chain that is left, doesn't it?

Q. Yes.

A. That is what I meant.

Q. That is all you meant?

A. I didn't mean it in reference to what it was going to do to Safeway, if that is what you meant, or Ralphs. Now, if Von's-Shopping Bag and Ralphs had consolidated it would certainly increase their market share of the volume [fol. 515] in Southern California over what it is now.

Q. But you have no reason to expect or anticipate such merger, have you?

A. No, I don't have.

Q. Now will you explain how this merger of Von's and Shopping Bag will probably substantially lessen competition, as you say in Paragraph 14?

A. Well, your basis for opening a store, a food store, is how much prospective volume you can acquire if you opened a store. Now, if there is already a Market Basket or a Von's there, or a Shopping Bag, you are not going to run up and take the lot next door and open up a new store, not unless you've got awful good backing from somebody, because you know you are going to sit there and pretty well starve to death for a few months. That was the reference I had, that if they've got all this territory covered with one store or another there certainly isn't room for another one in there.

Q. Do you know of any single Von's store or Shopping Bag store which doesn't face competition from a number of other stores?

A. Not offhand I don't know. I know if you have an independent store doing a couple of million dollars and there is a lot available you will have a chain store next door.

[fol. 516] Q. When you say that this merger will probably substantially lessen competition, how do you reconcile that

with your statement in Paragraph 12 that you face very vigorous competition from Von's and your testimony here that you haven't seen any change in the vigor of competition since the merger?

A. Well, all I said was that we faced vigorous competition before or afterwards, either one. They are real good competition.

Q. And yet this merger will substantially lessen competition?

A. It will lessen their operating cost.

Q. And that is what you meant by lessening competition?

A. Yes. Inasmuch as if I could operate this law office for two per cent less than you could you would likely think quite a while before you opened up a law office with 50 attorneys in it.

Q. What, in your opinion, is a monopoly?

A. Any time you have—Anything would be a monopoly that you had enough of anything to monopolize the control of it.

Q. How does this merger tend to create a monopoly?

A. Well, inasmuch as it gives them a bigger buying power, a better advertising medium, and everything that goes right down the line with operating more stores.

[fol. 517] Q. They don't have any bigger buying power than Certified Grocers, or anything comparable, do they?

A. I imagine they are comparable. I don't think after you reach a period of one car or five cars, I don't think there is any difference in the price.

Q. I think you earlier testified that you felt there were several thousand single store operators and at least a hundred small chains aside from the major chains doing business in this area; isn't that right?

A. Something to that effect.

Mr. Coyle: I think the witness testified he didn't know how many small chains there were.

Mr. Alsup: The record will speak for itself.

Q. On the basis of your study of the industry, Mr. Fairbank, do you think Von's has anything like the assets of A & P?

A. No.

Q. Or of Safeway?

A. No.

Q. Or of Acme Stores?

A. No. Well, I don't know anything about Acme.

Q. Don't you know it is either the third or fourth largest concern in the country?

A. Yes, I do. But I don't know what their assets are.

Q. Or Food Fair?

[fol. 518] A. I don't know much about them, either.

Q. Do you know anything about Ralphs?

A. Yes.

Q. What do you know about them?

A. I know that they, four years ago, were about the only chain in Southern California—they had the highest financial rating of any chain in Southern California except for the four that was from the East.

Mr. Alsup: I have no further questions.

Mr. Coyle: Off the record.

(Discussion off the record.)

Cross-examination.

By Mr. Coyle:

Q. Mr. Fairbank, were you ever interviewed by any defense counsel in connection with this statement that you have given the government?

A. No.

Q. Did you give this statement to the government voluntarily?

A. I did; yes.

Q. Did we speak informally with you prior to having this statement typed up?

A. You did.

Q. Did we give you a chance to consult your records and think things over and form a conclusion before this statement was formulated?

A. You did.

Q. In your experience in running a grocery store it is necessary to keep informed of events in the area?

A. It is.

Q. And when you.

Mr. Alsup: I don't like to object unnecessarily, but these are leading and suggestive questions, I believe, and this is your witness. I prefer the questions be properly on direct examination.

Mr. Coyle: I believe this is your witness, Mr. Alsup. You noticed this deposition.

Mr. Alsup: If there is going to be any quarrel about this we will adjourn and get a ruling from the court. You furnished me with a statement that the witness would testify to if called. He is your witness. He is listed as a government witness.

Mr. Coyle: I will proceed with the questioning now, Mr. Alsup.

Q. Mr. Fairbank, read this Paragraph 2 of your proposed testimony. What type of survey did you refer to that you conducted in the area? What type of survey did you refer to?

A. Well, I am talking about The Key on the price structure, which carries a price structure for all the chains. It [fol. 520] is supposed to be weekly. And I am also talking about the survey we make of our own immediate competition, talking about Von's across the street.

Mr. Alsup: Can I interrupt a minute off the record?

(Discussion off the record.)

Mr. Coyle: Q. Mr. Fairbank, in your statement you refer to your inspection of grocery advertising by the major chains as it appears in the metropolitan newspapers. What chains do you refer to who advertise in the metropolitan newspapers?

A. Safeway, Von's-Shopping Bag, Ralphs, All American, I don't think All American advertises in the metropolitan but we can tell you—

Mr. Alsup: Actually the statement says "local papers."

Mr. Coyle: I am sorry, Mr. Alsup, I am referring to the statement that says "metropolitan papers."

Mr. Alsup: I am sorry.

The Witness: We usually try to study the ads both in the metropolitan papers and in the local papers because some of the local chains, of course, don't advertise. I don't be-

lieve that All American advertises in the metropolitan, it is just local.

Mr. Coyle: Q. Based upon your experience in the industry, Mr. Fairbank, have you formed any conclusion as to whether or not it is necessary for an operator of a retail [fol. 521] grocery store to drive through the area and inspect various stores in the area in order to ascertain what they are doing and how they are operating?

A. I think that is necessary that somebody affiliated with the organization drive through the area.

Q. Does your organization have someone drive through the area?

A. We do.

Q. Do you ever do it yourself?

A. Sometimes.

Q. Is it necessary in operating a retail grocery establishment for the person who rides through the area to take notice and form general conclusions as to what is happening in the grocery trade, for example as to whether or not there is a trend towards one organization owning a large number of stores or a trend away from single store operations?

Mr. Alsup: I object to the form of the question on the ground that it is leading, suggestive, confusing, complex and compound.

Mr. Coyle: If the witness can answer it, let him answer it.

The Witness: Well, I don't know that we do that. We do drive through the area and try to ascertain how much business the competition is doing, as near as we can.

Mr. Coyle: Q. Have you, as a result of this driving [fol. 522] through the area, formed any conclusion as to whether or not there has been a decline in the number of single store grocery retailers operating in the area?

A. Well, that we would know without even driving through.

Q. And you have formed a conclusion as to that?

A. Yes, we have.

Q. What is your conclusion?

A. That there has been a couple of independents that went out of business in the Downey area.

Q. And in other areas have you formed any conclusion, the other areas where you operate stores?

A. Well, actually I haven't because we have the same amount of competition in the Trona store that we have always had.

Q. Is this competition mainly from the chains or independents?

A. Independents. Except for Ridgecrest, if you can call that—

Q. Where is Trona?

A. Trona is 179 miles north and east of Downey.

Q. What county is it in?

A. San Bernardino. Our nearest chain store competition is Ridgecrest, which is 29 miles. Fox went out of there. He was the only chain operator that was in there.

[fol. 523] Q. When you were shown these government exhibits prepared by the State Board of Equalization did they conform to your understanding of what was happening in the retail area?

Mr. Alsup: I object to the form of the question on the ground that it is leading and suggestive and calls for a conclusion of the witness.

Mr. Coyle: Q. Answer the question now.

A. Well, I would say that the survey was about what my assumption would have been as to the trend of the business in Southern California.

Q. Was your conclusion based upon your own experiences?

A. Well, it is based on practical knowledge you have of the industry. You can see when—You definitely know when somebody has left the area that you are in or something.

Q. Was it necessary for you to make this kind of judgment in order to keep abreast of things in the industry so that you could survive in this competitive industry?

A. Yes, I think you are going to have to keep alive if you are going to survive.

Q. You testified in response to Mr. Alsup's question that you built, sometime about ten years ago, a shopping center in Downey; is that correct?

A. Yes.

[fol. 524] Q. How does that shopping center compare to the newer shopping centers being built today?

A. Smaller, much smaller.

Q. And then you had a tenant in your shopping center named—What was his name?—Seabring?

A. Seabring, yes.

Q. Did he operate a grocery store?

A. Does he now?

Q. Did he then?

A. Yes, he did.

Q. Did you take over his grocery store?

A. I did.

Q. Was he in difficulty when you took it over?

A. No. Only he just didn't—He felt the competition was keen enough that he didn't want to keep the store up. He said he made his money and he felt it was time to get out.

Q. Have you made any efforts to get into other shopping centers yourself?

A. Yes, I have.

Q. You mentioned one of them in response to Mr. Alsup's questions. Were there any other efforts that you made?

A. Well, only inasmuch as when I built this store here, and building it on leased ground, on long time lease ground, I found that I couldn't borrow the money to put the building up, although I had a financial rating of about \$200,000 at [fol. 525] the time. I couldn't make only about a 20 per cent loan for the building because it was on leased ground.

Q. Have you formed any general conclusions as to whether or not the size of the supermarkets in the area is increasing or decreasing?

A. Well, I don't think they are increasing now over what the trend has been for the last five or six or seven years.

Q. Has there been a trend in the last five or six or seven years?

A. In the last ten years there has been a trend of putting them up from twenty to thirty thousand square foot.

Q. Have you formed any observation or conclusion based upon your experience in this industry as to whether these large supermarkets are owned by chain operations or by independents?

A. Mostly by chains.

Q. The question was: Have you formed a conclusion?

A. What do you mean?

Q. I wanted a yes or no answer whether you formed a conclusion.

A. Well, I have a definite opinion that they are owned by chains, most of them. I don't know that it's a conclusion.

Mr. Alsup: In what area are you referring to, Mr. Coyle?  
[fol. 526] Mr. Coyle: In the area Mr. Fairbank has been observing.

The Witness: I have reference to the Downey area.

Mr. Coyle: Q. Yes. Now, have you in the course of your business observed or taken note of the warehousing facilities in a general way which the various chains have in the area?

A. Only to the extent that I know through my Certified membership that they have their own warehouse.

Q. You know that they have their own warehouse. Do you know whether these warehouses are served directly by railroad shippers?

A. In most cases they would have to be.

Q. Do you know as a result of your experience whether or not chains are able to buy in heavy volume directly from the producer?

A. From my experience, you say?

Q. From your own observations or your experience with Certified.

A. Well, it would be my assumption that they were able to.

Mr. Alsup: I move to strike the answer as not responsive.

Mr. Coyle: Q. I asked you whether or not you—

A. Of course I don't have any basic figures to back up [fol. 527] my statement but I am sure that they must buy on a good discount basis, otherwise they wouldn't do their own buying, they would continue to buy through Certified.

Q. Is it common knowledge in the industry that they have their warehouses?

A. It is.

Q. Is it common knowledge in the industry that most of them have railroad shippers?

A. It is.

Q. Is it common knowledge in the industry that they buy directly from the producers?

A. Yes, sir.

Q. You talked about inventory control in response to Mr. Alsup's questions. Can you tell us what the purpose of keeping an inventory in your store is?

A. Well, you would almost have to keep a periodic inventory or you wouldn't know whether you were going broke or whether you were making money.

Q. Do you also keep a supply of merchandise so you have it there on hand to sell to the consumer?

A. You must have a supply of merchandise, at least ample until your next delivery.

Q. Is there an advantage in keeping that supply of merchandise if you have a large warehouse in order to store your merchandise?

[fol. 528] Mr. Alsup: I object to the question on the ground that it calls for a conclusion of the witness and no foundation has been laid to show that he is qualified to so testify.

Mr. Coyle: I think this man has been in the grocery business and there is plenty of foundation.

The Witness: You would have to have ample warehouse space to warehouse what you were selling. But you would have to have if you were going to stay in business.

Mr. Coyle: Q. Does it facilitate your warehousing in maintaining an inventory if you have a single warehouse serving a number of stores?

A. Yes, you would have to have. If you were serving a number of stores out of a warehouse you would have to have a warehouse and an inventory.

Q. And as you have more stores served out of the same warehouse does that bring down your net overhead?

Mr. Alsup: I object to that on the ground that it calls for a conclusion of the witness and no foundation has been laid.

The Witness: Well, of course, I really am not in a position to say what the exact conditions would be in a chain store warehouse because I have never operated one. But you certainly wouldn't have to keep the inventory for the multiple number of inventories for 20 stores that you would if you

only kept an inventory for one store. So a chain store [fol. 529] inventory would logically come down. It would logically be less.

Mr. Coyle: Q. Does this observation have any relationship to the statement appearing in Paragraph 6 of your statement, "This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in term of inventory control"?

A. I would think that it would give them some advantage inasmuch as they would have a little more direct delivery from their own warehouse. Actually they don't have any more direct delivery, but they likely have less days involved between their order—I am only assuming this—between an order of one of their own stores and delivery than they would if they went through a co-op.

Q. Is that your conclusion as a businessman?

A. Well, that is my assumption as a businessman that they would have.

Q. Isn't that a question of general business knowledge?

A. I don't really know whether it is or not, to be honest with you.

Q. You say that it has been your experience at one time that Von's and Shopping Bag purchased from Certified; is that correct?

A. Yes.

Q. Was that prior to the time they built their warehouse [fol. 530] houses?

A. Yes.

Q. You sold a store recently, Mr. Fairbank, The Lucky Five. Did you handle the produce in The Lucky Five?

A. We did.

Q. And you handled that directly yourself?

A. Well, when you say "directly," I didn't have it leased out.

Q. Yes.

A. Yes.

Q. Referring to your statement in Paragraph 7, you would state that the cooperative does not carry such major perishable products as fresh dairy, meat and produce items. Does that conclusion relate in any part to your experience as the owner of The Lucky Five?

A. Well, that's common knowledge that the cooperatives don't carry those things. I mean your produce you have to buy—we had to buy direct from the wholesale produce. And also now, of course, it is being changed but we also bought our dairy products and we will have to continue to buy our milk from the dairies.

Q. Referring to this graph, which I am going to ask the reporter to mark as Fairbank Exhibit No. 1, being a percentage of total grocery store sales for various groups of chains in the Los Angeles metropolitan area for the period [fol. 531] 1950 to 1960.

(The graph referred to was marked by the notary public as Fairbank's Exhibit No. 1 for identification, a photostatic copy of which is attached hereto.)

Mr. Coyle: Q. Referring you to Fairbank Exhibit No. 1, can you tell us what the market share shown on that exhibit was in 1950 for the top 20 chains in the area?

Mr. Alsup: I object to the question on the ground that the exhibit speaks for itself.

Mr. Coyle: Q. Go ahead and answer the question.

A. What year did you want me to tell you about?

Q. 1950.

A. In 1950 it was about 41 per cent.

Q. And in 1958 what was the percentage?

Mr. Alsup: The same objection.

The Witness: About 54 per cent.

Mr. Coyle: Q. Prior to approving this draft of your testimony did you form any conclusion as to whether or not that increase was in general agreement with your own observations in the industry?

Mr. Alsup: I object to the question on the ground that it calls for a conclusion, that it is argumentative and no foundation has been laid.

Mr. Coyle: I just asked the witness if he formed any [fol. 532] conclusion.

Mr. Alsup: I have made my objection.

Mr. Coyle: Q. You can answer "Yes" or "No."

A. Yes, it was about my conclusion before I even looked at the chart.

Q. Was it also your conclusion that the 15 top chains in the area had increased from about 39 per cent to about 50 per cent as shown on this exhibit?

Mr. Alsup: The same objection.

The Witness: About the same conclusion.

Mr. Coyle: Q. When shown similar charts prepared by the government from the Bureau of Census data did you form any conclusion as to whether they also conformed to your understanding?

Mr. Alsup: I object to the form of the question on the ground that there is no foundation laid to show the chart is similar.

Mr. Coyle: I will have this marked as Fairbank Exhibit 2, please, being entitled "Changes in Concentration in 4, 8, 12, 16 and 20 Largest Grocery Chains in Los Angeles Metropolitan Area, 1948 and 1958."

(The document referred to was marked by the notary public as Fairbank Exhibit No. 2 for identification, a photostatic copy of which is attached hereto.)

[fol. 533] Mr. Coyle: Q. Mr. Fairbank, can you tell us what the market share, as shown in 1948 for the 20 largest chains in the metropolitan area, is on that exhibit?

Mr. Alsup: I object to the form of the question on the ground that the exhibit speaks for itself.

Mr. Coyle: Q. Go ahead, can you tell us what the percentage is?

A. At what year?

Q. 1948.

A. 43.8 per cent.

Q. What was the percentage in 1958?

Mr. Alsup: The same objection.

Mr. Coyle: Q. Go ahead and answer.

A. 56.9 per cent.

Q. I am comparing that exhibit with Fairbank Exhibit 1.

Do the exhibits show approximately the same thing as to——

Mr. Alsup: I object to the form of the question. It obviously calls for a conclusion of the witness and the exhibits speak for themselves.

Mr. Coyle: Q. In your judgment do they both show the general picture that you observed in the industry?

Mr. Alsup: I have the same objection.

The Witness: Pretty much the same both charts are, yes. They both show the same increase.

[fol. 534] Mr. Coyle: Q. You referred to a strike in 1959. In your judgment, based upon your experience, is that strike in 1959 reflected in Fairbank Exhibit 1?

A. Yes, it is.

Q. How is it reflected?

A. All the major chains went down in volume inasmuch as they weren't in operation for part of the year.

Q. Is there anything in this Fairbank Exhibit 1 which indicates to you whether or not the chains subsequent to the strike started to recover?

Mr. Alsup: I object to the form of the question on the ground that it calls for a conclusion. The exhibit speaks for itself.

The Witness: Yes, they did start to recover.

Mr. Coyle: Q. Is that your general understanding of what has happened in the industry?

A. Yes, it is.

Q. Mr. Fairbank, you testified that from your general knowledge and from seeing published reports that it was your conclusion that Von's was profitable prior to the acquisition in question.

A. Yes, I did.

Q. If called as a witness would you be in a position to interpret similar annual reports published by Shopping Bag to determine whether that firm was also profitable prior [fol. 535] to the acquisition, if such annual reports were shown to you?

A. I think I would.

Q. You mentioned in your direct testimony that the Von's

store directly across from your store bears the name "Von's." Does it also bear the name "Shopping Bag"?

A. Not on the sign I don't believe.

Q. Does it advertise?

A. They are advertised in the local and metropolitan papers as "Von's-Shopping Bag."

Q. Is there any doubt in your mind that it is one organization?

A. No.

Mr. Alsup: We will stipulate to that.

Mr. Coyle: Q. Is there any doubt in your mind that the consumer recognizes it as one organization?

A. I think they all do.

Q. And their area-wide and local advertising is carried under the single name?

A. Right.

Q. And there is no question in your mind that they were two of the largest chains in the area?

A. Volumewise—

Mr. Alsup: I object to the form of the question because I think it is confusing and ambiguous. I don't know what [fol. 536] you mean by "the largest." Do you mean A & P, Safeway, Food Fair?

Mr. Coyle: The witness has answered that, Mr. Alsup. He said in volume they were two of the largest in the area.

Mr. Alsup: A & P's volume in the country is over five billion.

Mr. Coyle: The witness said "in the area."

Q. Referring to Paragraph 10 of your statement, where you list Von's-Shopping Bag along with Ralphs, Safeway, Market Basket and Thriftmart, Alpha Beta, Mayfair and Food Giant as among the leading firms in the area, did you consider these firms when you drew your conclusions as to the increasing market share in the area?

A. Yes, I did.

Q. Referring to Paragraph 11 of your testimony, when you referred to Von's-Shopping Bag were you referring to the advertising and the inventory carried in these stores?

A. Yes, I am.

Mr. Alsup: I object to the form of these questions on the

ground that they are leading and suggestive. I think with your own witness you should ask him what he had in mind there and not put words in his mouth.

Mr. Coyle: He is testifying, Mr. Alsup, from his own statement. The statement is right in front of him.

Mr. Alsup: My objection still stands.

[fol. 537] Mr. Coyle: Q. In Paragraph 13 you state that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. Could you name some of those consolidations?

A. Well, there has been this particular consolidation and Food Giant has consolidated with McDaniel's, or taken them over, whichever way legally you want to state it. I don't know which one it would be. There is the one the defense attorney talks about, Yor-Way Markets.

Q. Was there a market in the area called Raisin's?

A. There was.

Q. What happened to that?

A. That was sold to Alpha Beta.

Q. Did Alpha Beta buy Raisin's?

A. Yes.

Q. Was there a market in the area known as Lucky, or a chain known as Lucky?

A. Well, there was one in the Bell-Maywood-Huntington Park area.

Q. Was there a chain known as Hiram's?

A. Yes. That is consolidated with Lucky now.

Q. Have you formed any conclusion, based upon your observation both as a businessman and as a retail grocer, as to whether or not acquisitions seem to run in series, that is one acquisition will follow another?

[fol. 538] Mr. Alsup: Well, I object to the form of the question. It calls for a conclusion and is pretty speculative.

Mr. Vaughn: Why don't you let him finish talking before you interrupt.

Mr. Coyle: I thought he was finished.

Mr. Vaughn: Obviously he wasn't.

Mr. Alsup: And further that no foundation has been laid.

Mr. Coyle: Q. Have you now formed any conclusion as to that matter, Mr. Fairbank?

A. There seems to have been a heavy consolidation in the last, I would say, five years. I don't know whether it is due to financial stress that some of the chains have gone into or whether it is just a consolidation. There has been quite a consolidation.

Q. And in Paragraph 14, when you refer to your conclusion that there will probably be further mergers, did you have any specific chain in mind when you made that conclusion.

A. Well, of course, anybody that is affiliated with the industry immediately thinks of anybody that is in distress in the industry, that is chainwise or single storewise. My thinking is somebody will likely take All American. I don't think there will be any doubt about that. Whether they do it under voluntarily bankruptcy or it's a consolidation. I [fol. 539] guess that most of the stores that Fox has had has been taken over by the major chains. I don't know of any of them that any independent got.

Q. You refer to service meat departments. Do any of the chains have service meat departments?

A. Not in the sense that I refer to. They all have some self-service, maybe some of them have service and self-service. I take it back, I believe Von's has service in Bell.

Q. But that is not in your area?

A. No.

Q. What would happen to you competitively if you stopped your service meat department?

Mr. Alsop: I object to the form of the question. It obviously calls for a conclusion and conjecture.

Mr. Coyle: Q. Can you answer that question?

A. We feel we would lose some of the customers we now have if we went to self-service meats instead of service meats. Because we know that we have some of the better clientele in Downey that want their stuff all custom cut.

Q. Have you any conclusion as to whether or not you could continue to operate competitively if you eliminated your service meats department?

A. We don't feel we could operate as efficiently. If we did we would likely go to self-service.

[fol. 540] Q. Do you feel that this is your best competing point to keep business?

A. We do.

Q. You testified that you could change your prices overnight and you engaged in some speculation as to whether a big chain could change prices overnight. Do you think Mr. Von Der Ahe could change prices overnight if he wanted to?

A. I think he could chainwise if he wanted to.

Q. You referred to the Hughes Markets. Do you know how Hughes got started?

A. One store. Outside of that that is about all I know.

Q. Do you know whether he acquired it or opened it?

A. No, I don't. I am not sure.

Q. Do you know whether he acquired some of his subsequent stores?

A. I think he did acquire some of them.

Q. You mentioned that you buy Blue Chip stamps from Certified. How long have you been buying Blue Chip stamps from Certified?

A. Ever since the organization was put into effect and they were allowed to purchase through Certified.

Q. Were Blue Chip stamps on the market prior to the time Certified started selling them?

A. I think they were. I am not sure.

[fol. 541] Q. Who handled Blue Chips at that time?

A. Well, they have their own warehouse and their own distribution point. We didn't go into Blue Chips originally when they first came on the market. We had Blue & Gold.

Q. Has Certified made any acquisitions over the past few years?

A. What do you mean by that now?

Q. Have they taken over the business of any other co-op?

A. Spartan Grocery.

Q. Would that account for some of their increased volume?

A. Yes, it would.

Q. How many co-ops are there in the area at the present time?

Mr. Vaughn: What area?

Mr. Coyle: The Los Angeles metropolitan area.

Mr. Knight: The section of the country we are talking about in the lawsuit.

Mr. Coyle: Q. You mentioned Certified and Orange Empire in the area?

A. I think there are some small ones called Cash & Carry, and Spartan is still a co-op inasmuch as it is operated for the momma and poppa small store operators.

[fol. 542] Q. But it is owned by Certified?

A. Yes. There is only two of any size, that is Certified and Orange Empire.

Q. Do you know whether Safeway has sold stores over the years?

A. I don't believe they have ever sold any.

Q. Do you know whether Von's has sold any stores?

A. They haven't sold any, to the best of my knowledge. They might have sold some but not to the best of my knowledge.

Q. Do you know whether some of the chains have sold some of their more inferior stores and opened up larger and newer ones in the suburbs?

A. Some of the smaller chains have. All American has disposed of some of their smaller stores. I think the general practice with Safeway is to close the small stores entirely.

Q. Do you know whether they have closed their small stores?

A. They have closed some of them. They have closed three or four that I know of. They closed one at Eastern and Clara in Bellgardens and they closed one at Atlantic and Gage, Atlantic and Florence in Bell. They opened two supermarkets, one on Florence in Downey and one on Florence in Huntington Park and one on Washington Boulevard [fol. 543] in Pico-Rivera. They closed the small store they had on Downey Avenue in Downey. That is the only three that I am personally acquainted with.

Q. You mentioned that 65 per cent of your customers come from within a one and a half mile to two mile area. What would happen to your store if you lost the other 35 per cent of your customers that come from outside that area?

Mr. Alsop: I object on the ground that that is argumentative and calls for a conclusion of the witness.

The Witness: Well, if we actually lost 35 per cent of our volume we would have to cut down.

Mr. Coyle: Q. Do you have any conclusion as to whether you could stay in business without that other 35 per cent?

A. Take that 35 per cent of our volume and it would take a large readjustment, that's for sure. I don't know whether we could stay in business or not. I assume we likely could. It wouldn't be very profitable.

Mr. Coyle: Would you mark this document entitled "Testimony of Don Henry Fairbank" as Fairbank Exhibit No. 3, please.

(The document referred to was marked by the notary public as Fairbank Exhibit No. 3 for identification, a carbon copy of which is attached hereto.)

[fol. 544] Mr. Coyle: Q. Mr. Fairbank, I show you the document we have been referring to entitled "Testimony of Don Henry Fairbank." Does this document contain your conclusions and observations based upon your experience as a practical retail merchant in the Los Angeles metropolitan area?

Mr. Alsup: I object to the form of the question on the grounds that it is leading, suggestive and argumentative. The witness has identified the statement and he has testified with reference to it. I have no objection to marking the document.

The Witness: I would say it does. The same as this one.

Mr. Coyle: I have no more questions.

Redirect examination.

By Mr. Alsup:

Q. Mr. Fairbank, you testified that Certified now owns Spartan; is that correct?

A. Right.

Q. And Certified is owned by its retail members; isn't that right?

A. Right.

Q. You are a part owner of Certified; isn't that right?

A. Right.

Q. You indicated that some of the increase in volume [fol. 545] of Certified over the years was due to the acquisi-

tion of Spartan. How much of that increase would you attribute to the consolidation with Spartan?

A. I am not in a position to say because I don't know figurewise what it is.

Q. You get patronage dividends from Certified, do you not?

A. Yes, I do.

Q. Do you feel that the consolidation of Certified and Spartan was in your interest as one of the retail owners of Certified?

A. I wasn't of the belief that it would be.

Q. Has it adversely affected your patronage dividends?

A. It hasn't done much of anything to them so far inasmuch as most of their sales at Spartan is broken cases which the cost of handling is quite a little bit greater.

Q. You said that over the past five years there have been a number of consolidations and you mentioned Food Giant consolidating with McDaniel's. Isn't it a fact that McDaniel's went into bankruptcy?

A. I think they did.

Q. And didn't you testify that there were rumors in the industry that they couldn't pay their bills?

A. That's right.

Q. Didn't you testify that they had expanded too rapidly [fol. 546] with inadequate capital?

A. I don't think I testified to that.

Q. Perhaps you didn't. It was true, was it not, from your study of the industry that a large number of McDaniel's stores were sold off to single store operators prior to the bankruptcy?

A. No. I don't know of any of them that were. There could be but I don't know of any.

Q. You didn't see that in any of the trade papers?

A. No, I didn't.

Q. You mentioned Hiram's consolidated with Lucky. Was that the means by which Lucky entered this market area?

A. I think they had some other stores besides that.

Q. Do you know if they did?

A. I know they had one in the Downey area.

Q. Did they?

A. Yes, they did, or the Norwalk area. I don't know which one you would call it. It is right on the borderline.

Q. You said there were rumors in the industry that Fox and McDaniel's were having trouble paying their bills before they went into bankruptcy. Did you hear any such rumors concerning Shopping Bag?

A. No.

Q. You say that when you think of mergers you think of companies that might be in distress and you mentioned [fol. 547] All American. Do you recall that?

A. Yes.

Q. Is All American generally regarded in the industry as being in distress right now?

A. Well, that is the talk among the wholesalers.

Q. How long has that situation existed?

A. Oh, for the last couple of years, since Blayne Hutchinson passed away.

Q. You said that you would expect someone to merge with them. Who would you expect to merge with them?

A. Well, it wouldn't surprise me if Food Giant merged with them.

Q. Is that speculation on your part?

A. In some sense it is. And in another sense I have a friend who deals in the stock market and he was told to hang onto All American stock that he had because there was a possibility that it would belong to Food Giant before long.

Q. It was based on that hearsay plus speculation?

A. That's right.

Q. You were referred to this Exhibit 1. Will you look at it again?

A. Yes.

Q. Can you tell us whether the top 20 indicated there are the same top 20 as are listed in 1960?

A. No, I couldn't.

[fol. 548] Q. Could you do it for the top 15?

A. Not according to this survey I couldn't.

Q. How about your own knowledge, based on your study of the industry?

A. I would say that with the exceptions of maybe two that are no more in business it would be the same.

Q. That is that the top ten in 1950 were the exact same concerns with the top ten in 1960?

A. That I don't know. This survey doesn't have a top ten.

Q. I am asking about your knowledge based on your study of the industry.

A. That, I don't know.

Q. But if I asked you about the top eight would your answer be the same?

A. I don't know that they haven't changed from '50 to '60.

Q. How often do you get deliveries from Certified?

A. Twice a week.

Q. And it has two warehouses, has it not?

A. No.

Q. One in the San Fernando Valley and one out on Eastern Avenue?

A. Yes. But we don't get any deliveries out of San Fernando.

[fol. 549] Q. It serves a large number of stores from those warehouses, does it not?

A. Right.

Q. All stores of retailers who own an interest in Certified; is that correct?

A. If they can buy a case or better. If they can't purchase a case of any one thing they can't buy it out of Certified.

Q. You were asked about some changes that have occurred in the industry in recent years. Can you think of any others? How about discount houses?

A. The last three years they have come very much into effect.

Q. Have you read predictions in various of the trade papers that eventually they will put supermarkets out of business?

A. Well, that I don't believe.

Q. Have you read that in various trades?

A. I have read some newspaper talk on that but I don't believe it.

Q. There has been an advent of bantam stores, like Speedee Mart in recent years, hasn't there?

A. Yes, there has.

Q. Has this changed the competitive picture?

A. No.

[fol. 550] Q. They have a certain share of the market?

A. They have a very small share, yes.

Q. And the discount houses?

A. I would say they have quite an increase over what they would have had five years ago.

Q. You testified your financial rating was \$200,000 in 1951. Do you recall that?

A. Approximately, yes.

Q. What is your financial rating now?

A. My own, you mean?

Q. The comparable figure.

A. I would say maybe \$250,000, \$300,000 maybe. I don't know. I haven't checked it lately.

Q. If you added in your interest in the Trona operations would it increase it?

A. Not right now it wouldn't.

Q. Do you expect it to?

A. If we eventually get it paid for it would, yes.

Q. You testified that Mr. Seabring gave up the lease because he had made his money and felt it was time to get out. Do you recall that?

A. Yes, I do.

Q. Had he made his money in operating this grocery store?

A. He had.

[fol. 551] Q. You testified that two independents, I gather you mean single store operators, had gone out of business in the Downey area.

A. Right.

Q. Will you name them?

A. Well, it was the Downey Drive-In Market, and there is one down next to Kenny Craun, and I think it was called the Liberty Market. They both went broke.

Q. Has anyone else opened up?

A. There is a restaurant where the drive-in was. I don't know what is in the building next to Kenny Craun.

Q. Incidentally, when was this that they went out of business?

A. In the last three years.

Q. Have you seen any new single store operators come in the business in Downey in this time?

A. Well, this Speedee Mart you are talking about came in since then.

Q. Just the one Speedee Mart?

A. I think there is one in South Downey but I am not sure of that. But the one I have reference to is in the old Downey business section.

Q. Any others?

A. None that I know of.

Q. Any discount houses?

[fol. 552] A. There are some in South Downey, there is none in North Downey.

Q. These discount houses have food departments, do they not?

A. Yes.

Mr. Alsup: Mr. Bates has a question.

By Mr. Bates:

Q. Mr. Fairbank, you have testified that on the basis of your observation and continued study you have noticed that the number of independent grocers has declined. Then in response to a question by Mr. Coyle you say that you observed a couple of independents out of business in the Downey area, that you formed no conclusions as to other areas. It is true, isn't it, that you formed no opinion or made no observations as to Orange County, as to that decline?

A. Well, I don't think there has been any decline in the volume of food business in Orange County.

Q. My question was: You made no observation as far as Orange County is concerned? You confined your observations to the Downey area, didn't you?

A. Do you have reference to an increase in food markets or the growth of the area?

Q. The decline in the number of independent markets, Mr. Fairbank.

A. No, I haven't made any observation of any of the [fol. 553] towns in Orange County.

Q. On single store operators?

A. Right.

Q. I will read Paragraph 3 in your statement that you gave the government. You say, "On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since he has been in the grocery business the number of single store grocery retailers operating in the area declined." That is not true, then, is it? You have made no observation in the metropolitan area but just the Downey area.

A. That is not exactly what I meant when I made this statement. According to surveys there has been a decline in single store operations all over the metropolitan area.

Q. Can you define the metropolitan area for us?

A. I wouldn't consider Orange County part of the Los Angeles metropolitan area. I would say Los Angeles, the beach towns. Isn't that what is commonly called the metropolitan area?

Q. I am asking you, Mr. Fairbank.

A. That would be my opinion of the metropolitan area.

Q. But as far as your observations are concerned then it is true that the only decline you noticed was the couple of stores in the Downey area?

[fol. 554] A. You mean that I could name the two stores?

Q. Yes.

A. That is the only two that I can name specifically.

Q. Mr. Fairbank, you said that you made an effort to get in other shopping centers, in response to a question by Mr. Alsop, who asked where you made this effort and you forgot the name of the friend. Have you remembered the name of that friend yet?

A. No. But I will get it for you if you like.

Q. Can you name any other efforts that you made to get into any other shopping centers?

A. No.

Q. This one instance where you made an effort through your friend was the only effort that you ever made to get in?

A. Well, I have made some inquiries, if that is what you mean. I tried to get in across the street on the location that Von's was in when Milano had it. But I couldn't finance the building that he wanted on there.

Q. We are talking about shopping centers. There was no shopping center in that area, was there?

A. There was nothing in that area when I went there.

Q. Let us confine the matter to the shopping centers for the moment and I will ask you again. Aside from this one instance—

[fol. 555] A. That is the only shopping center that I have ever tried to get in.

Q. Mr. Fairbank, when Mr. Coyle was examining you you stated that before looking at the chart, which has been designated as Fairbank Exhibit 1, you had formed the conclusion that the top 20 markets in the metropolitan area had increased their market share.

Mr. Coyle: Excuse me. I don't think that is exactly what he testified.

Mr. Vaughan: That is exactly what he testified to.

Mr. Coyle: He testified in terms of Paragraph 8 of this statement. I think you should read Paragraph 8.

Mr. Bates: Q. Let me ask you the direct question, Mr. Fairbank. Did you testify that you had formed a conclusion that the top 20 had increased their market share before you ever saw the chart marked Fairbank Exhibit 1?

A. Are you asking me if they have increased their volume-wise percentage?

Q. No. I will restate the question again. In response to a question by Mr. Coyle did you tell him that you had formed a conclusion before looking at the chart that the top 20 markets in the metropolitan area had increased their market share?

A. Yes, I had.

Q. And you also said that you formed a conclusion before [fol. 556] seeing the chart as to the top 15 markets having increased their market share; is that true?

A. I don't think so.

Q. What is the basis of your conclusion, which you formed before seeing the chart, that the top 20 markets had increased their market share in the metropolitan area?

A. The growth and the increase of the stores they have.

Q. Can you identify these top 20 as to whom you formed this conclusion?

A. You mean individually?

Q. Yes. Name them off.

A. No, I don't think I can. I could go through the 20

that I think are the leading 20 operators in Southern California. I don't know whether it would be 1, 2, 3, 4, in that order, or anything.

Q. Before looking at the chart if you formed a conclusion you must have known whom the conclusion applied to, if it was the top 20, didn't you?

A. I don't know that it was exactly—Maybe we used the word "top 20." But I don't like the idea that you say it is either top 20, top 14 or top 12. I don't know whether 11 is ahead of 12 or 12 is ahead of 11.

Q. This is the statement that you used and the phraseology that you used in this signed statement here.

[fol. 557] A. Which paragraph are you referring to?

Q. I will refer to Paragraph 8, in which you say, "The market share of the 15 largest chains increased from 38.4 per cent to 50 per cent."

Mr. Coyle: Mr. Bates, why don't you read the sentence to him. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area he is in agreement with the picture presented in the defendants' exhibit. He is talking about a picture that he sees, not that he has made his own study and knows exactly which the top 20 were and which percentage they had.

Mr. Bates: Mr. Coyle, suppose we let Mr. Fairbank testify. You are not testifying here and you are not under oath.

Mr. Coyle: You just read the statement to him and ask him if that is true or not.

The Witness: Actually I don't see in that statement where I made the statement that I had assumed that before I looked at this chart, where I named 20 or 10 or anything.

Mr. Bates: Q. I don't see it in this statement either. But you told Mr. Coyle that, you have just admitted that you formed the conclusion before seeing the statement.

A. On the top 20?

Q. Yes.

[fol. 558] A. I don't think so.

Q. Mr. Coyle asked you what would happen to your business competitively if you were to eliminate the service meat

department. As a matter of fact, you would lose customers if you would eliminate that department, wouldn't you?

A. We feel we would.

Q. And it would cost you more to operate the department, too, wouldn't it, in packaging this meat and in loss from spoilage?

A. That is not so.

Q. What is the truth about it?

A. You can operate a self-service market for about nine and a fraction per cent labor against eleven and a half in—I mean you can operate a self-service market for less than nine, or around there, where it costs you about eleven to operate a service market.

Q. Could you make more profit if you would institute a self-service department in your store?

A. If we could create more volume we would.

Q. As a matter of fact, you don't have any intention of eliminating the service department, do you?

A. Well, we have talked about it, both pro and con, but we wouldn't want to do it a hundred per cent because we feel we would lose some of the customers we've got.

Q. Then you feel it is more in your interest to operate [fol. 559] it as a service department than it would be as a self-service department?

A. If we can hold the customers we now have, it is.

Mr. Bates: That is all.

Mr. Coyle: I have a couple of questions.

Recross-examination.

By Mr. Coyle:

Q. You referred to a Speedee Mart market that had been opened in your area. How many square feet does the Speedee Mart market have?

A. I really don't know. I would say not to exceed 5,000 square feet, but I am only guessing.

Q. How much volume of business would a Speedee Mart be able to do in that square footage?

Mr. Alsop: I object to the question. There is no foundation laid.

Mr. Coyle: Q. Would you have any basis for knowing how much?

A. No, I wouldn't. I think it's a two-person operation so I don't think it did much volume. But I wouldn't have any way of telling.

Mr. Coyle: No further questions.

Redirect examination.

By Mr. Alsup:

Q. And you don't know, I gather, Mr. Fairbank, what [fol. 560] volume this Liberty Market was doing that you mentioned?

A. No, I don't.

Q. Or the other single store operator that went out of business?

A. Very little, I can tell you that.

Q. Or did you know the size of those two stores?

A. I would say they were around between six and eight thousand square feet. I am just guessing at that now. I have no basis for that.

Mr. Alsup: Thank you.

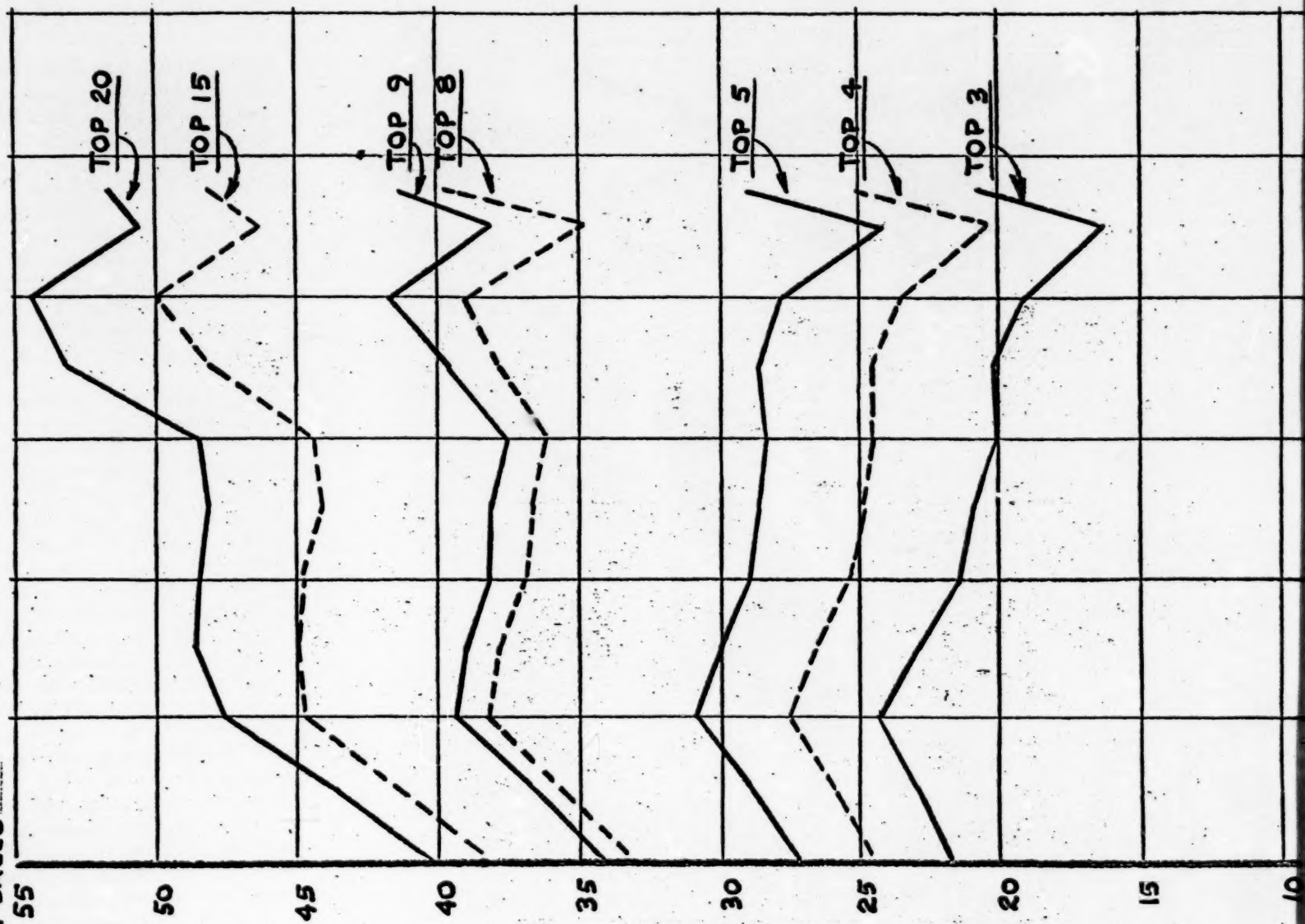
Mr. Coyle: That is all.

Mr. Alsup: May it be stipulated that it can be signed before any notary?

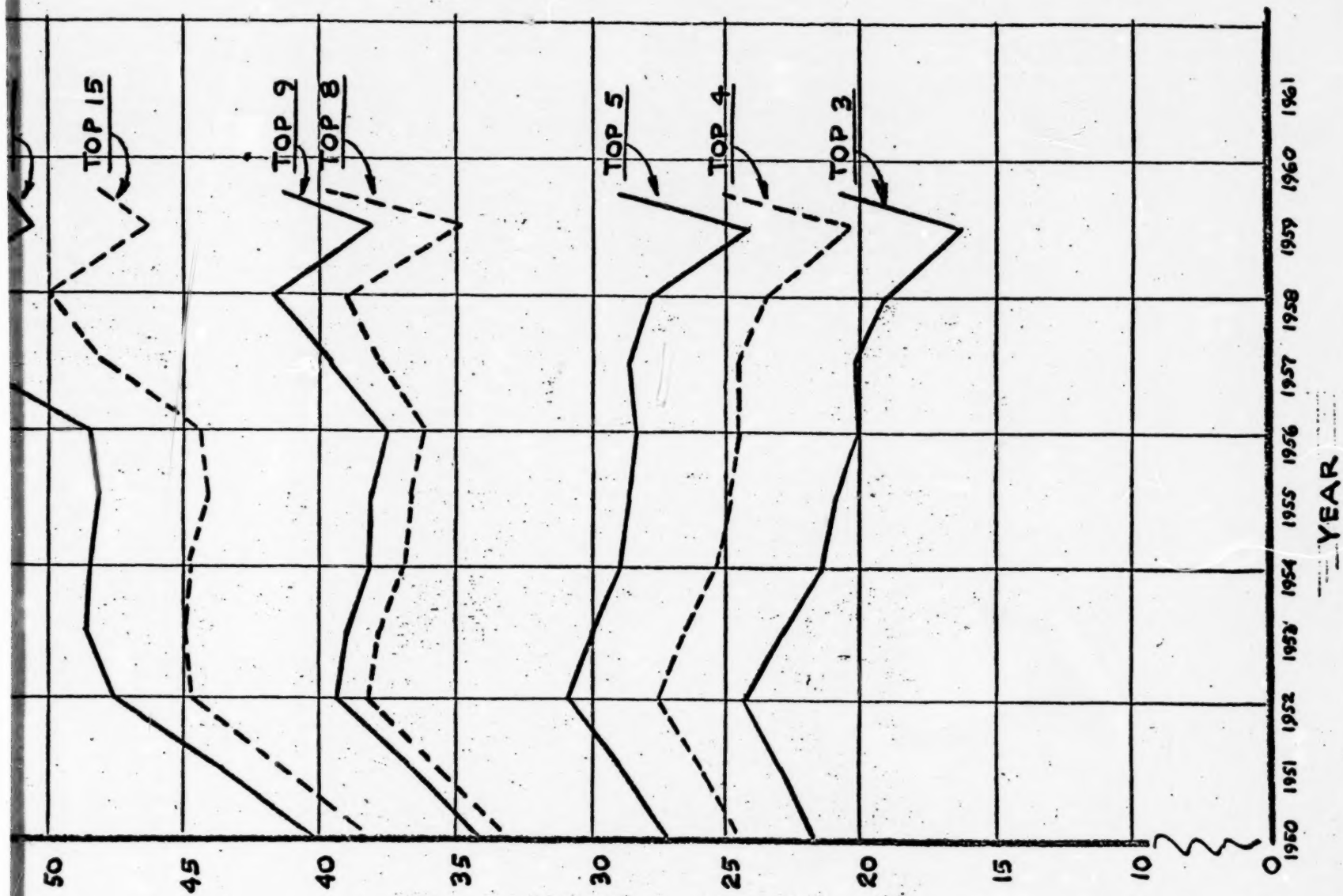
Mr. Coyle: I suppose so. I would like to give him a chance to supply that one name.

(Signed) Don Henry Fairbank.

PERCENTAGE  
OF GROCERY  
STORE SALES



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## [fol. 561] TESTIMONY OF JERRY FLEISHMAN

If subpoenaed to testify, Jerry Fleishman would testify as follows:

1. He is the owner of Beverly-Normandie Market, 4213 Beverly Boulevard, Los Angeles, Los Angeles County, California. He has owned this market for about one and one-half years, but he does not own the meat or produce departments. This market had sales of about \$125,000 for the six-month period during which it was operated in 1961, and sales of about \$265,000 in the year 1962.

2. He was employed as a clerk by Shoppers Market from 1946 until 1954. He managed an independent Food Fair Market from 1954 until 1956 when the owner went bankrupt. In May, 1956, he bought a grocery market located at 3271 West Pico Boulevard in Los Angeles. He continues to operate the West Pico Market and it had 1961 sales of about \$225,000.

3. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Fleishman closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all the major chains appearing in these booklets. In keeping [fol. 562] abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

4. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing

size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

6. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A [fol. 563] financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

7. He would agree with Mr. Claude W. Edwards, president of Alpha Beta Acme Markets, Inc., a Von's industry witness, that it is far preferable to build your own grocery store from the ground up than it is to buy one already operating. However, he would testify that the cost of building and financing a new store is prohibitive, and to build one the size of the average large chain supermarket today would be impossible for an independent retailer with limited financial resources. With very few exceptions, only the large chains can build such stores today, and a single store operator generally gets started by buying an existing store.

8. The large chains have as much flexibility in buying supplies, in advertising and in pricing as do the single store operators. Almost every large chain belongs to Certified Cooperative and also buys direct. Therefore, they have every advantage of an independent and in addition they have their own direct buying organization. The large chains can and do advertise in local papers and in metro-[fol. 564] politan papers, changing their advertisements and prices on short notice. An independent cannot be more flexible in advertising than this. As for flexibility in pricing items, he would state that if he does not meet the advertised prices of the chain store, he will not sell his groceries.

9. He would also state that in an effort to compete with the chains some single store operators must give credit, delivery services and other personal attention. However,

giving credit is not within the ability of the average independent since the independent cannot get credit from his suppliers to cover his purchases and the extension of credit requires a great deal more capital than the average independent has at his disposal. Further, the cost of maintaining a truck and employing a delivery boy would necessitate higher prices. This might attract some customers but would lose others and the relative merits of such advantages are marginal.

10. The witness would testify that single store operators and small chains do not have their own highly own developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and [fol. 565] deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

11. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major perishable products as fresh dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of the cooperative with direct purchasing and a high developed distribution system.

12. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the picture presented in defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per [fol. 566] cent; and the market share of the 20 largest

chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

13. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

14. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

15. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March, 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the [fol. 567] search for new locations is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's-Shopping Bag."

16. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

17. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

18. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and

in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will [fol. 568] have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 569] Deposition of JERRY FLEISHMAN, taken on behalf of defendants, at 433 South Spring Street, Los Angeles, California, commencing at 2:00 P.M., Wednesday, April 17, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

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JERRY FLEISHMAN, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Alsup:

Q. Will you state your name and address.

A. Jerry Fleishman, 438 South Highland, Los Angeles, California.

Q. That is your residence address?

A. Residence.

Q. Would you state your business address.

A. 4213 Beverly Boulevard.

Q. You have another business?

A. I have other businesses but not in the grocery business.

Q. Don't you have a grocery business on Pico and Wilton, 3271 West Pico?

A. No, I sold out.

[fol. 570] Q. When was this?

A. October 1, 1961.

Q. Do you have any interest in the property at Pico and Wilton?

A. Yes, sir. I own the property.

Q. You own the store there?

A. I own the store. Not the store, I own the property.

Q. Do you own the store building?

A. I own the building, yes.

Q. You lease it to some other operator?

A. Lease it to an operator.

Q. Who is that?

A. Jacobwitz, and I don't remember the other name. In fact it is in escrow now, they sold out. They already sold out. It is in escrow as of a couple of days ago.

Q. Do you own that automatic laundry?

A. I did own it. I don't own it now. I have a mortgage on it. I did own it at one time but I had to give it up.

Q. We have been furnished a statement by the government attorneys entitled "Testimony of Jerry Fleishman," Mr. Fleishman. Do you have a copy of that with you?

A. No, no. Maybe I do. I didn't even look. I am so busy I didn't even look what's in there.

Whatever I say it's—I don't know. Do you want to look [fol. 571] at it? I don't remember what is in it.

Q. I want you to keep it in front of you and I want to ask you some questions about it.

A. If you find it I will keep it. I didn't even look at it.

Mr. Coyle: Here is a copy of it.

Mr. Alsup: Q. You read that statement before you signed it on February 5, 1963?

A. Yes, I did.

Q. Have you read it since?

A. No, I don't remember reading it again.

Q. So far as you know—

A. Whatever I said here, if I read it, I will tell you. There are a few things in here that I went through it. Let me read it slow and then I could tell you.

Q. Why don't you read it off the record.

A. Read it all slowly.

Q. Read it to yourself and then you can tell us what corrections, if any, you want to make in it.

A. Okay.

Well, I own the meat now.

Q. That is in your Beverly—

A. Normandie market. At that time I didn't. I was not employed as a clerk at Shoppers Market. I was a supervisor

for Shoppers Markets. I did not manage the Food Fair [fol. 572] Market, I was the manager of the delicatessen at the Food Fair Market. But I did not manage the whole market.

I did not subscribe to the Key Service, I subscribe to the Black & White Book, whatever you call it. I don't know what the Key Service is. Which is the same thing, probably, as the Key Service. I don't know.

Q. How about that Super Market Merchandising, is that Super Market News?

A. I read all that. In fact I should have brought one with me. The last one I think was the Progressive Grocer, was it, and it gives you the tables about all the stores that close up all during that time. I think it was the last one. But I was so busy I didn't have time to bring it. But there is in the last Progressive Grocer, if you read it, it gives you the whole picture about it. But that is national, isn't it? Progressive Grocer is national?

Q. I am referring to this Super Market Merchandising in your Paragraph 3 there. Do you really mean Super Market News?

A. Paragraph 3?

Q. At the bottom of Paragraph 3.

A. The bottom of Paragraph 3 it says Super Market Merchandising?

Q. Yes.

A. What is Super Market Merchandising? I don't know. [fol. 573] I read the Progressive Grocer, the Chain Store Age and the Commercial Bulletin. To me Commercial Bulletin—when I said Commercial Bulletin I meant about bad checks. That is Commercial Service on Hollywood Boulevard.

Now, can we stop here at No. 5—I mean up to No. 5 and I want to say something.

When I say, it is lessening and lessening, small stores and all that, I just happened to be Friday night, I was invited out for dinner Friday night—

Q. Mr. Fleishman, I think it would be much better if you would read this and tell us of any technical corrections—

A. I was going to stop there and comment on this.

Q. I would like to put the questions to you and have you respond to the questions.

A. Okay.

Mr. Coyle: I suggest it might be better if you start questioning him now.

The Witness: While it is fresh in my memory. And I would say something about lessening and lessening of the small stores.

Mr. Alsup: Q. Are you ready—

A. I want to say something, but if you want to ask me questions, go ahead.

Q. I want to ask questions. How long have you been in the grocery business, Mr. Fleishman?

[fol. 574] A. You mean altogether?

Q. Yes.

A. I have never been in any other business except the grocery business.

Q. How old are you?

A. I am 54 and I have never done anything else except groceries.

Q. When did you start in the grocery business?

A. Oh, I started probably when I was—food business. Let's say food. Grocery is food. I started in the food business when I was probably seven or eight years old, or nine years old.

Q. Where?

A. In the Soviet Union. I sold salami, bologna, raw pork, bread and all of that in the Soviet Union.

Q. When did you start in the grocery business in the United States?

A. 1929.

Q. In what area?

A. 4710 Church Avenue in Brooklyn.

Q. When did you come to California?

A. In 1941, December 1941.

Q. Did you go to work in the grocery business?

A. Yes. I went to work for Roberts Market on Crenshaw and Jefferson.

[fol. 575] Q. Did you work for them until you went into the Military Service?

A. I worked for them until I went into the Military Service, right. In fact I worked for Better Foods for about three

weeks while I have a leave. You know, you have three weeks leave, I went to work for Better Foods.

Q. Then after you were released from the Army—Was it the Army?

A. Yes, the Army, yes.

Q. Where did you go to work?

A. I went to work back for Roberts Market.

Q. How long did you stay with Roberts Market?

A. I stayed at Roberts Market after that about a year.

Q. And then where did you go to work?

A. Then I went to work for Shoppers.

Q. In what capacity?

A. I went to work for Shoppers as a manager of the delicatessen.

Q. What year was that?

A. On East 1st and Boyle. I think it was in 1947.

Q. That was the Shoppers Market out in Brooklyn Heights?

A. On East 1st and Boyle, 1819 East 1st.

Q. How many stores were there in the Shoppers Market at that time?

[fol. 576] A. No stores at all, just the one, only one.

Q. How long did you stay with Shoppers Market?

A. I stayed with Shoppers until 19—Let me see. I have to remember now. I had a '53 car, 1954. Around about March 1954.

Q. By the time that you left Shoppers in '54—

A. I did not leave Shoppers, they let me go. I said the truth. I got to tell the truth.

Q. When Shoppers let you go in 1954 you had risen to the position of supervisor; is that correct?

A. I was supervisor of the delicatessen.

Q. What was your annual compensation?

A. In fact I was supervisor of the delicatessen, but I was supervisor of every operation supervisors had, including sweeping the floor.

Q. What was your annual compensation?

A. At that time, I think with the bonus that I got, and everything else, it was probably around 14-15 thousand a year.

Q. Paragraph 1 of this statement says that you are the owner of the Beverly-Normandie Market.

A. Yes.

Q. And that you have owned it for one and a half years.

A. Yes.

Q. Do you own the property?

[fol. 577] A. No.

Q. You lease the store?

A. I lease the property, yes.

Q. When did you lease it?

A. I think it is exactly about two years ago yesterday or today. I don't remember. It was about this time of the year in April. I don't remember exactly but it is exactly two years.

Q. Who had operated this store before you leased it?

A. A fellow named Kaplan—

Mr. Smith: Kaplan and Polasky.

Mr. Alsup: I am sorry, Mr. Smith—

The Witness: I couldn't remember the names.

Mr. Smith: I happened to work there, that is why I knew who they were.

(Discussion off the record.)

Mr. Alsup: Q. When you leased this store at Beverly and Normandie in April of 1961, did you do any remodeling or painting?

A. I sure did.

Q. Why did you do that?

A. What is that?

Q. Why?

A. Well, I figured I could do more business that way.

Q. Do you have any knowledge of what the gross sales of [fol. 578] that prior operator was at that store?

A. According to what he told me it was 16,000.

Q. 16,000?

A. Yes. I have never seen any books.

Mr. Hughes: 16,000 what?

Mr. Alsup: Q. Per month?

A. Per month, yes.

Q. What happened to the gross sales after you started operating the store?

A. Well, I went up to 22 and I did as high as 23 a month.

But I got to put something in there. You didn't ask me. But I stayed open until 10:00 in the evening instead of them closing at 7:00.

Q. Do you recall talking to me on June——

A. I sure did.

Q. —June 21——

A. I don't remember it was you. I remember talking to someone.

Q. Do you remember talking to me June 21, 1961?

A. I don't remember if I would see you out in the street.

Q. Do you remember telling me that the prior operator was doing only \$8,000 a month?

A. Oh, no, I never said that, no.

Q. Do you recall——

[fol. 579] A. I couldn't say that 8,000. I could not say that 8,000, because for 8,000 I wouldn't pay the man what I paid him for.

Q. I am going to show you a picture, Mr. Fleishman.

Mr. Coyle: You better have it marked if you are going to show it to him.

Mr. Alsop: I would like the picture to be marked Fleishman Exhibit 1.

(The picture referred to was marked by the notary public as Fleishman Exhibit 1 for identification, and is attached hereto.)

The Witness: That is the picture I had in my store.

Mr. Alsop: Q. This was the picture that you had in your store——

A. In Beverly on the window.

Q. —in June of 1961?

A. I suppose it was around then, April, May, June, yes, that's right.

Q. Would you read——

A. Anyway, let me say something else. Where did you get the idea of \$8,000? I want to know that.

Q. That is from my notes, Mr. Fleishman.

A. I don't care about your notes, but I never told you 8,000. I would never have the nerve and guts to tell a man sold me an \$8,000 store. I wouldn't even buy a \$8,000 store.

[fol. 580] Q. Do you recall, Mr. Fleishman, that you told

me that your gross sales in that store in the month of April 1961 were \$13,951.26?

A. I sure do. That is definitely so. That is the month I took over and they were operating most of the month of April.

You remember I said that day is just the anniversary. It had to be this month. I don't remember what day. And I told you that I did \$14,000 while I was remodeling it. But I never told you that I did \$8,000.

Q. I will accept your statement, Mr. Fleishman. Do you recall telling me that you did \$17,933.82 in May of 1961?

A. Definitely so, I sure did.

Q. Do you recall telling me that you expected to do \$20,000 by August, despite the fact that times were bad?

A. Definitely so. I did that. But I never told you about \$8,000.

Q. We have agreed on that, then, Mr. Fleishman. Let us get on with the deposition and we will get through.

A. Okay, that's all right.

Q. Would you read to me what that sign says in the window?

A. Yes. In fact, if you remember: "Under New Management, New Price Policy. Our Shelf Prices Are As Low Or [fol. 581] Lower Than Any Chain Market Because We Are A Member of The Largest Co-op Buying Power In The World." Namely Certified Grocers, which I had on the back on the side here, but you didn't put it in. There is a little sign, somewheres around here. Maybe it wasn't there at that time, but I did have Certified Grocers in the window somewheres there. I don't remember whereabouts it was. This is the sign.

Q. Do you recall when I talked to you in June of 1961 that I came in and said I had seen the sign and asked you if the sign correctly stated your views?

A. At that time, yes. I tried. At that time it did, it sure did.

Q. Paragraph 1 of your statement, which has been furnished to us, states that your market had sales of about \$125,000 for the six month period during which it was operated in 1961.

A. Yes.

Q. Actually that was a nine-month period, approximately eight and a half months?

A. Well, April—Let's see. Well, April was almost the end when I walked in. Nine months. Well, I don't remember offhand but I could say it was more than that.

Q. You had sales of \$265,000 in the year 1962?

A. Oh, yes, that definitely.

Q. What other stores in the area of your Beverly-Nor-[fol. 582] mandie Market do you compete with?

A. I gave out competing with any of them. I don't even know that any existed. I am not interested no more.

Q. You are not?

A. No.

Q. Is there a Better Foods Market?

A. There is a Better Foods Market, definitely, yes.

Q. How far away is that?

A. Better Foods is about probably two blocks away, same side of the street.

Q. And that is an eight-store chain?

A. Eight? Well, I wouldn't know. I know it's a chain store but I don't know how many they got.

Q. Is there a Ralphs farther on up the street at Western?

A. There is a Ralphs about ten blocks away, or maybe twelve, at Western—no, on Rosewood and Western, that's right.

Q. Is there a Von's at 3rd and Berendo?

A. Yes, sir, there is a Von's at 3rd and Berendo, which I was never in it.

Q. Pardon?

A. I was never in that store.

Q. Is there a Safeway at the corner of 3rd and Vermont?

A. There is.

[fol. 583] Q. Is there a Ralphs at the corner of 3rd and Vermont?

A. That's right.

Q. Is there a Cooperative Food Store a little bit east?

A. No, there isn't. It's a private owned, it is called Sklar's Market.

Q. What other stores are there in this general area?

A. I don't know. I never went looking for them.

Q. From what area do you draw the bulk of your customers that you serve at this Beverly-Normandie Market?

A. Hard to tell. Well, according to the checks that I take I could say they are in the immediate neighborhood. It is people that come in for fast—you know, to buy fast. Come in a hurry to get it and get out, immediate neighborhood. I don't think we have any customers from three or four blocks away.

Q. Why did you pick a location like this at Beverly and Normandie when it is surrounded by chain stores?

A. Well, I picked the location because I saw it was a lot of traffic on the corner, it was a good—and I looked around, a lot of apartment houses and no garages. And I figured a lot of people that live around the neighborhood don't have no cars, and when they have no cars they are lazy to walk a block or two, so I am in the right neighborhood.

Q. Do you recall—

[fol. 584] A. And then I start opening up until 10:00 o'clock in the evening.

Q. Do you recall on June 21, 1961 suggesting to me that I ask you why you picked this location, which is surrounded by chain stores?

A. Yes. I will tell you what I said. I don't know what you got there but I will tell you what I said.

At that time I thought—At that time I did think that I could sell the people—that I could sell the merchandise just as cheap as the chain stores, which I could, and I still agree on it, that I can sell if they would come in and fill up that basket as they fill up with Ralphs or Safeway or Von's, fill up that basket for \$20 or \$22. I would even give them a \$2—I would give them \$2 in cash plus the stamps. I would do it.

But there is no way I can convince them and there is no way I could ever convince them that I sell the same price as the chain stores. I tried and tried and tried and I think all my trying is just thrown out, except the ones that like to come in and get a fast service, or they like to come in because they like me or they like the butcher, otherwise I—There is no way I could compete because the advertising, I can't make it.

Q. Do you recall also saying, "My overhead is a great deal less than that of the chains"?

[fol. 585] A. Definitely so. It is today too.

Q. I think you mentioned in that connection that the

chains have to have supervisors and accounting assistance—

A. Exactly, right.

Q. —and chain store managers don't watch the light bills.

A. That's right. And they have conventions and all that. I know it.

Q. And there are many other reasons you said why their overhead is greater than yours.

A. Their overhead is greater than mine, right.

Q. Did you also—

A. The overhead is greater than mine in the operating of the store. But let's put the discounts—let's get the discounts. When Sunshine brought me in a check just now, I didn't even look at it, for \$5, I wonder how big the check was to the chain stores, what percentage they got. I don't know. He just brought it in when I left, when I was walking out. But I don't know how big the discount is to the chain stores. I know that the chain stores are getting five per cent from bread discounts. We little guys used to get it but they took it away. We don't get it no more. They gave it to us for a while and then they took it away.

So my operating cost, what I mean my clerks are cheaper, my rent probably is cheaper—my rent is probably cheaper—[fol. 586] and I probably put the lights out ten times a day to save the lights, which the manager in Von's or Ralphs wouldn't do it. But the discounts I know I don't get them.

Q. You also recall telling me that you can take care of your customers better, you get to know them by name and they get to like you?

A. That is exactly what I mentioned before. You asked me how do I do business and I told you the reason why.

Q. I think you mentioned that the chain managers, being employees, are less interested in their customers and are frequently changed around and they don't have the opportunity to give the customer the personal touch.

A. I didn't say about change around. I never said the words that the managers are being changed around. I never said that. But I said they are less interested than I am. But I never said anything about managers being changed around because I don't know how you change them around in the chain stores. I never mentioned that.

Q. Did you also tell me that many people get tired of waiting in a long check-out line at the supermarkets?

15 A. That is why they come in to me.

Q. And prefer to shop in a small store like yours?

A. Exactly. A lot of them come in for small items. I will bet you that I don't have ten orders a week compared to any one of the chain stores. I don't have them. I get small [fol. 587] items, yes. When they come in 5:00 o'clock, 6:00 o'clock, come off from work, bottle milk, loaf of bread, a bottle of whiskey, a bottle of beer and all that. When it comes to the big basket of groceries—In fact, let me put that in too. That my business on Friday is worse than on Tuesday. I do more business on Tuesday than on Friday.

Q. Then we should have you in on Friday.

A. I am just saying my business is better on Tuesday than it is on Friday. My business was better in a week without a holiday than with a holiday, because before Easter they go to the big chains to fill up. Short items they come to me because they want to get out in a hurry.

Q. Do you recall telling me, Mr. Fleishman, when I talked to you on June 21, 1961, where you thought the ideal location for you would be if it were physically possible for you to be there?

A. Between five chain stores and I should be in the middle and have fast checking out. But how am I going to get in there, where am I going to get the land to get in down there?

Q. I think you mentioned that your ideal location would be right between Ralphs and Safeway on 3rd and Vermont.

A. Exactly. But how are you going to get in? It would be nice.

Q. How is it physically possible? There is a street there. [fol. 588] A. If Ralphs or Safeway would give me a corner of their property I will rent it. That's right. But it is physically impossible, you know that. I am just talking.

Q. Didn't you tell me that many people who would come to shop at either Ralphs or Safeway would get discouraged with a long check-out line and would become regular patrons of yours if you had a store right next door?

A. I didn't get you.

Mr. Alsup: Would you read it to him, please.

(The reporter read the pending question.)

The Witness: Oh, no. They still going to go there because they think they are getting a bargain. I did not say that. I tried it with that sign, I tried to see for myself at that time if it is going to work or not. But I don't care, I show them the book and I could show them it is the same price. You can't convince them. It is impossible.

Mr. Alsop: Q. Do you recall showing me on that occasion, Mr. Fleishman, an article from Super Market News that you had clipped out which was a survey of women shoppers which indicated they preferred to shop, that is a majority preferred to shop in small stores like yours?

A. I showed it to you and I believed in it at that time too. But I find out what they meant. They like to shop in the small store for the small items but not for big orders. [fol. 589] That's true.

Q. I think you said that you were discharged by Shoppers Market.

A. Definitely so.

Q. I believe you told me when I talked to you in June of 1961 that you could not get along with Mr.——

A. Getch.

Q. And Mr. Getch was Charley Futterman's partner then; isn't that right?

A. That's right. Mr. Getch is dead now.

Q. And Mr. Getch fired you——

A. That's right.

Q. And in this period from 19——When was it, '46 or '48?

A. No. You mean from the period when I was discharged?

Q. You were discharged, you said, in '54.

A. '54, yes. '47 to '54.

Q. Had Shoppers Market grown?

A. When I left they had four stores.

Q. Do you recall telling me that the growth of Shoppers Market from one little store out in Brooklyn Heights to——

A. It wasn't a little store, it was a big store.

Q. —to four stores was principally due to your hard work?

[fol. 590] A. Well, that is my opinion. You ask Futter-

man and he will probably tell you no. But I believe in it. Nobody wants to admit that.

Q. I think in Paragraph 2 you said that you didn't really manage the Food Fair Market in '54 to '56.

A. I did not.

Q. You managed the delicatessen only?

A. Delicatessen, yes.

Q. In this period from '54 to '56 did you also work for the Food Harvest Market?

A. They call it Food Fair. They had one market called Food Fair. Another one called Food Harvest. But it was the same people owned it.

Q. You also worked for the Thrift Town Liquor Stores?

A. No, I did not. I owned that. I owned that for a couple of months. Two months I think. A very short time.

Q. Did you work for Peter Pan Markets?

A. Six months.

Q. What was your compensation?

A. Where, Peter Pan?

Q. Yes.

A. I think it was about \$100 a week. Whatever union wages were for five days at that time. I don't remember exactly.

Q. Did you make an effort to get a job as a supervisor [fol. 591] with some other chain after you had been discharged by Shoppers?

A. I sure did.

Q. Do you recall telling me in June of 1961 that no chain would employ you——

A. Would hire me.

Q. —because they couldn't afford to pay you the supervisor——

A. Not they couldn't afford it. They could afford it but they wouldn't want to start me over \$15,000.

Q. Over someone who had been there longer?

A. That's right. People had been there longer.

Q. You indicated to me that you would have gone to work for less but they were afraid that you would be a dissatisfied employee having come down from \$15,000 to \$6,000?

A. That is exactly right, definitely so.

Q. Then Paragraph 2 states that in May '56 you bought a grocery market. That is the one at Pico and Wilton.

A. Yes.

Q. And it had sales in 1961 of \$225,000?

A. Yes.

Q. At that time you just acquired the lease on that store, did you not?

A. May 19—did have 225.

[fol. 592] Q. In 1961.

A. When I sold it.

Q. Yes.

A. Yes.

Q. You didn't buy the store or the property at that time, you just got a lease?

A. No, I just bought the store.

Q. You got a lease on the store?

A. I had a lease that time, that's right.

Q. How much did you invest when you got this market?

A. Well, let me see if I can remember. I am not sure it was eleven or ten five, that was for the liquor license and the good will and the fixtures, whatever was there, and I probably had some merchandise there. Probably about—It probably was about 22-23 thousand, somewhere around there. It is very hard to remember but I think it was around that.

Q. What was the source of your funds?

A. Where did I get the money from?

Q. Yes.

A. I had a duplex which was almost free and clear and I got a mortgage on that and I had some money that I sold that liquor store, and I made \$3,000, or about \$2500 profit on that. And that's how I got it.

Q. Do you recall telling me in June—

A. Oh, yes, I went to the bank. I borrowed from the [fol. 593] Bank of America on Adams and La Brea. I borrowed some money there, but I can't remember offhand exactly.

Q. Do you recall telling me that you borrowed from friends also?

A. Never borrowed from friends money in my life. They wouldn't give me. Now, if you will take it off the record I will tell you a good one. Take it off the record while you have a little time off.

(A short recess was taken.)

Mr. Alsup: Q. What was your net worth in 1956 when you acquired this lease on the Pico and Wilton store?

A. I will tell you the truth, it is very hard to tell you offhand. If I knew you were going to ask me these questions I would have been prepared. But it is very hard to say.

Q. Can you give us a rough estimate?

A. What do you figure, furniture, cars and everything else?

Q. Yes.

A. Is that what you figure net worth?

Q. Yes.

A. I don't know. Probably would be, I don't know, bonds and everything else, I don't know, thirty-five or maybe forty. In fact Charley Futterman told me I was a rich man. He said, "What are you worrying about, you are [fols. 594-595] a rich man."

Q. That was in 1956 he told you that when you were worth about thirty-five or forty thousand?

A. I couldn't tell you. I don't know exactly.

Q. What do you figure your net worth is now?

A. By now it should be about 100—everything probably about 140, 150.

Q. Is the principal source of this increase your profits from your grocery business?

A. Well, no. I had some from—what do you call—real estate. I start mingling—Soon I had a little money I started buying some real estate.

Q. That was after 1956 when you started—

A. Oh, yes, it was after 1956.

Q. —you started making profit in your grocery business and used it for real estate?

A. That's right.

Q. Your markets have been profitable in each of the years since 1956, have they not?

A. Always.

(Discussion off the record.)

Mr. Alsup: Q. Mr. Fleishman, what gross business was this Pico Store doing when you took it over in May of 1956?

A. About \$8,000, \$8,500 a month.

Q. Do you recall telling me in June of 19——

[fol. 596] A. Excuse me for interrupting. But the man was closed on Sundays, the man closed every night at 6:00 o'clock. And the only reason why I did it, it took a little blood and sweat, seven days a week, seven nights a week, and I was there with my wife and one man. We took care of the whole deal.

Q. You worked like a lawyer.

A. I didn't work like a lawyer. Lawyers don't work.

Q. But you told me that within two months you doubled the gross; isn't that right?

A. Definitely so, I sure did.

Q. And it continued to increase; isn't that right?

A. That's right. You are right.

Q. As a matter of fact, Mr. Fleishman, do you recall telling me on this time when I talked to you in June of 1961 that you had made more money in the last five years than you had made in your whole life before that and——

A. Working for somebody else.

Q. —and it was the best thing that ever happened to you that you got fired by——

A. Definitely so.

Q. —by Shoppers Market?

A. I sure said that, yes. I wish I would have realized it that day I would have been better off.

Q. Sometime after you acquired this Pico and Wilton [fol. 597] Store lease in 1956 a large shopping center was built two or three blocks away at Venice and Western, wasn't it?

A. Venice and Western, yes.

Q. We talked about that back in June of 1961, didn't we?

A. Yes.

Q. When was that shopping center built?

A. Well, I don't recall exactly when but I think it was about two or three years after I was already on Pico. I think it was about two or three years. I don't remember exactly.

Q. What stores are located in this large shopping center?

A. There is a lot of them there, but Safeway is the—the one I am interested in, Safeway is there. I don't know of any other store.

Q. Sav-On?

A. Sav-On is there too.

Q. And Newberry's?

A. I think so, yes. Sav-On, Newberry's, Safeway, yes.

Q. Is that a large volume Safeway store?

A. Well, the way I understand it was one of the largest volume stores they have.

Q. Do you recall telling me in June of 1961 that the construction of that Safeway store did not affect the volume [fol. 598] of the business of your Pico store at all?

A. Definitely did not affect, but I remodeled. I enlarged the store at that time.

Q. And it didn't affect your business?

A. After I enlarged the store. I bought the building. My landlord wouldn't do it for me because I wasn't a big man, so I bought the store from him and I enlarged it and it did not affect my business at all.

Q. Do you recall in this conversation we had in June of 1961 discussing that there was plenty of opportunity for the small operator in this area?

A. Which area?

Q. The Los Angeles area.

A. In the city at that time?

Q. In the Los Angeles area.

A. At that time I surely did, I surely did. But since then I am a little bit changed, and I will tell you why. If you will ask me, if you want me to tell you, I will tell you why.

Q. Mr. Fleishman, we had a telephone conversation in October 1962—

Mr. Hughes: I don't believe he finished the answer.

The Witness: No, no. I don't know. He said, "Just answer my questions."

Mr. Alsop: Q. That's right.

[fol. 599] A. You don't want me to say anything else.

I said since then I changed my mind. Since I talked to you I changed my mind about small store operations a lot, not that it affects me. I didn't lose any business yet as of now. I am still doing the business as I did, in fact I do more than 20,000. I remember I told you I would be happy if I do 20,000.

Q. That's right.

A. I did \$23,000 last month. But I could see where my

days are counted. That is what I am trying to tell you. And I will tell—Do you want me to tell you? You say, cut it short. And I tell you why my days are counted.

When Better Foods put a shopping center in right next block from me, and across the street they knock down everything and they are building a shopping center across the street, and when Von's is coming in on 3rd Street and Western, or whatever it is, 1st or 3rd, or whatever it is on Western, right around there, and Ralphs ain't going to stay still there too with an old store, they going to remodel theirs, they are going to build a new market completely. Then I could see my days are counted. I will wind up with a 10, probably 12,000 store and then it won't pay me to stay there no more.

Q. Your views have just changed completely since June of 1961 in that respect?

[fol. 600] A. Yes. Well, at that time Food Giant didn't open up on every corner like gasoline stations. Food Giant has stores on every corner just like gas stations and banks.

Q. Do you recall, Mr. Fleishman, I talked to you on the telephone in October of 1962 because you had told me that you were going to be a witness for us in this case—

A. The first time, yes. I am not a witness for you or for anybody. I am just telling you what I know.

Q. That is all we want to find out.

A. I am not a witness for anybody. I don't want to be pinned down that I am a witness for anybody. In fact all this stuff, I don't even know what's all about. The only thing I will tell you what I know.

You asked me if I do any business, my business dropped, it did not. My business increased. I did last month \$23,000, that is on record. You can put it down, \$23,000. I said I would be happy if I did \$20,000. I did 23. But I see my days are counted. Another six months.

And that is what I was trying to tell you. You didn't let me talk. When I was over Sunday night, that is the average opinion of the public, what I am trying to tell you. They say, "Where is your store? Oh, who wants a market. How could you exist, how could you exist?"

I said, "Did your wife ever try to shop in a small store?" [fol. 601] "She wouldn't walk in even."

I mean how could you sell? I buy from Certified and I do

this. I could talk from today until doomsday, they don't believe it. It's impossible.

The chain stores got it doped in in their heads that everything is given away. You could show them Black Book, you could show them the prices, it doesn't mean anything. The only reason why I do it is by effort. I told you this too, that people could do business if you try. But if you don't have stores around you within a block away, so many. I was doing good. I will probably still do good until Better Foods remodels. I will probably do more. In fact when they demolish the building I will have it all for myself for about seven or eight months or nine months. But what is going to happen after that?

Q. Mr. Fleishman, you recall I talked to you on the telephone in October of 1962 and you said, "Maybe I have changed my mind. I am like a politician. A politician can change his mind, maybe I can too." Do you recall that?

A. Well, I think something similar to that. What I mean by "change my mind," I find out what we are heading for, what is going to happen. I told you again, when I see that Food Giant and Von's and Ralphs building without any customers, they don't even have the customers yet, but they are building for the future already. They are building 20 [fol. 602] years ahead. Where do I come shining in?

Do you know another thing I will tell you I tried two weeks ago, a fellow by the name of Portege called me, and he said, "I have a good spot for you for a market. Do you want it?"

I said, "Okay."

We went down there and it was in a shopping center. In fact he begged me not to say anything to nobody about it because he brought a lemon like me down there. The owner of the property was very, very upset because he brought a little guy from Beverly and Normandie to rent that place from him. So he was very upset. He was murder.

He says, "What kind are you bringing down people?"

He wants big names.

Sure, I will stay there, I am making a good living and everything else. But is there any future for my boy if he wanted to go in the grocery business? Is there any future for him to go in, like Futterman went in 15 or 12 years ago without money? Is there a future for him? Who is going to

lease him? The truth now. Who is going to give me a lease or my boy a lease on a big supermarket today when they could get you, Von's, Ralphs, Safeway, Shopping Bag, Shoppers and all that. How are they going to lease me a market? Let's be honest and sincere. How are they going to lease me a market? What do they need me for.

[fol. 603] Q. Mr. Fleishman, really, we will have to get back to answering the questions or we will never get through.

A. I am just telling you what you want to know.

Q. Do you recall in that telephone conversation you said you changed your mind because Food Giant was building right next door to your friend Larry Frederick's Hollywood Ranch Market?

A. No, I did not. I don't even know who Larry Frederick is. I did not tell you. Now, here is again, I don't know Larry whatever his name, Frederick, who he is.

Q. You don't know the Hollywood Ranch?

A. I know the Hollywood Ranch but I don't know who owns it. I have nothing to do with Larry Frederick or whoever owns it. I knew another fellow down there, he is on the Certified Board, Nate Gilbert that owns the Hollywood—I think Nate Gilbert, I know him. I know him just talking, hello.

Q. The owners of the Hollywood Ranch Market, didn't you see and didn't you read in the Super Market News, that they were glad—

A. I can't read everything. But I don't know who Frederick is.

Q. Listen to the question, please, Mr. Fleishman, and then we will get through.

A. Go ahead.

[fol. 604] Q. They were glad it was a chain that was moving in next to them and not an independent? Do you recall reading that?

A. No, no, I didn't read that. No.

Q. Do you recall, Mr. Fleishman, on June 21, 1961 telling me that you were sure there had not been any decrease in the number of small grocery stores in this area?

A. Do I remember at that time? Yes.

Q. Didn't you tell me that people have been predicting for

20 or 30 years that the small grocery store would soon be extinct but you didn't agree at all?

A. I never did agree on it. At that time, yes. That's right.

Q. Didn't I tell you that the government had given us some statistics, furnished to them by the Board of Equalization, which reported that in the last ten years some 1480 stores had gone out of business?

A. Where?

Q. In the Los Angeles metropolitan area.

A. I wouldn't know what the government has statistics. I am talking the ones I know.

Q. Didn't I mention that to you?

A. I don't remember.

Q. Do you recall telling me——

A. No, I don't recall that. But it could be.

[fol. 605] Q. —telling me that I should check to see if they were true grocery stores or just specialty shops, because you didn't believe the figures?

A. Well, I don't believe stores like mine, you know, in the \$20,000 market bracket, if the guy did operate it right would go out of business. Except when Food Giant or anybody came across the street from him. As long as they have been away four or five blocks he could make a living. But as long as they come right across the street there is nobody could exist. It is impossible.

Q. I think you told me that time we ought to check because you would bet that if any stores——

A. I know, between them. But that was two big markets and I figured the overflow.

Q. Listen to my question.

A. I know what you are going to ask.

Q. If I would check and find that the freeway system might have knocked out a few mom and pop stores in the east and the south? Do you recall that?

A. Yes. I still say in a small working class poor neighborhood, a small store would exist because they got to buy daily. They don't buy no big orders. They used to go to the store three, four times a day. And that is what I meant at that time too.

But you come in, 90 per cent of the shopping centers [fol. 606] where people buy Saturday and Sunday and Fri-

day their big orders, that isn't so. But I said that on the east side, yes.

In fact I will tell you the truth, after I did talk to you I went down to the east side to look at it. I haven't been there for a long time. And I found out it isn't so either, the little store is suffering there now because they have too many chains around. I didn't realize that even Shoppers has one there too. I didn't know that Shoppers opened up another one down there on Atlantic Avenue, or somewhere around there. And then I saw so many big chain stores I didn't believe it.

Q. You are a member of Certified Grocers?

A. Yes.

Q. And as such you are a part owner of it?

A. Yes, sir. On paper.

Q. And Certified operates large warehouses, does it not?

A. Definitely so.

Q. And these warehouses are served directly by railroad shippers?

A. Yes, sir. And trucks.

Q. And Certified has a huge transportation fleet of about 340 tractors and trailers, doesn't it?

A. I wouldn't know.

[fol. 607] Q. Does Certified furnish any other advantages to you like insurance?

A. Up until now. I am going to change that now. I found out that it isn't so. There is another thing you say what I told you last year. I believe that insurance with Certified through Walker-Farmers is the cheapest one you can buy, because I buy it co-op. I find that isn't so. I could change my mind, can't I? When I come back I am going to throw the insurance out and buy my own insurance. I believed in it.

Q. Does Certified have some arrangement for helping its members finance the purchase of new equipment and facilities?

A. I never bought any equipment from them.

Q. Do you know the answer to the question?

A. I don't.

Q. Do they make accounting, advertising or any other services available to their members?

A. Advertising. But I couldn't afford that advertising.

Q. Certified made this sign for you, did it not, that appears in your window?

A. Certified did not make it. That was a sign painter that rented a place from Certified. He works in the basement down there and he makes signs. Certified has nothing to do with these signs.

[fol. 608] Q. Do you recall telling me on June 21, 1961 that the butcher and produce men in your store would testify that by buying in small quantities they can get as good or better meat or produce at the same or better prices than the chains?

A. Did I say that? No.

Q. You did not say that?

A. No. And if I did say that that time I am wrong, because I am in the meat business today and I could tell the difference.

Q. Didn't you tell me there are plenty of bargains available at the packing houses in small quantities—

A. After the market closes.

Q. —that the chains can't handle?

A. After the market closes, definitely so.

Q. Didn't you tell me that a small volume produce operator can be more selective as to quality and doesn't suffer as much from spoilage as the chain buyer?

The Witness: Could you read that? I didn't get that.

(The reporter read the pending question.)

The Witness: Definitely, yes, sir, right.

Mr. Alsop: Q. Didn't you tell me that you were certain that if the bills of the butcher and of the produce men in your market were compared with the bills paid by any chain for produce and meat it would be clear the smaller purchaser was doing just as well, if not better, than the chain on [fol. 609] both price and quality?

A. No.

Q. You did not say that?

A. No. Don't remember. I don't remember at all that.

Q. You don't remember?

A. Don't remember that at all. Because I will tell you the reason why I couldn't say that. Because I happen to know potatoes. I know potatoes and I don't want to men-

tion them. I have a brother that is in the potato market and I know it that the big chains don't even buy potatoes in the market, they buy it direct from the grower. Potatoes going to the chains, very little comes through to the market. It goes direct from the grower right into the chains. So I can't say that. My brother-in-law happens to be in the wholesale potato and onion business at 7th Street.

Q. Maybe this will refresh your recollection, Mr. Fleishman. Do you recall telling me that as proof of the ability of the small meat buyer to compete many butcher shops deliberately try to locate near a large volume store of a chain?

A. I didn't say small ones. There is a lot of meat men employing six-seven men would rather be near a chain store. Not to handle the same quality meat as the chain store. They handle cows and I know one successful operation.

[fol. 610] Q. I think you mentioned the one——

A. The one next to Safeway.

Q. Didn't you mention a butcher shop near Von's in Santa Barbara?

A. No, I did not. I don't even know about it. I don't know where Von's Market—Let me get this one. You are not going to put words in my mouth. I don't even know where Von's Market in Santa Barbara is.

Q. Over on Santa Barbara——

A. In the Crenshaw Village?

Q. In the Crenshaw Village.

A. I don't even know there is a butcher there. I haven't been there for five or ten years. I think I was in that market when it first opened. But I did tell you there is a successful butcher shop right next to Safeway on Venice and Western.

Q. On Venice and Western?

A. I did say that. But not to Von's.

Q. And does a very substantial business.

A. At that time. This was a year and a half ago, two years ago. I haven't been there now. Maybe he is out of there now. But he was doing very, very good.

Q. Maybe he is doing better for all you know.

A. Maybe he is doing better, that's right. But I haven't been there.

[fol. 611] Q. Do you know what has happened to the market share of Safeway, Mr. Fleishman?

A. Market what?

Q. Share of the market, total grocery sales in this area that Safeway has now as compared to what it had ten or twelve years ago.

A. Didn't look at it.

Q. You don't know whether it has increased or decreased?

A. Couldn't tell you.

Q. Do you know what Ralphs share of the market is now as compared to what it was ten years ago?

A. Never paid any attention.

Q. If I ask you the same about Von's what would your answer be?

A. Well, according to the statistics that I see, reading it, I mean they all increased. But how much, what, I never paid any attention. They all increased but I don't know how much. I couldn't say it. Well, the population increased too.

Q. That is you say they increased in volume but you don't know if their market share increased or decreased?

A. I don't know. I didn't look at it. Why ask me that question? You have statistics, look at them. It is wide open, isn't it? It is all corporations, it is wide open.

[fol. 612] Q. You told me, Mr. Fleishman, sometimes you can't rely on statistics and we have to check out the Board of Equalization figures.

A. When they tell you that Von's—They issue stock, it is a stock company. When they tell you Von's did so much and they netted so much, that is the truth, isn't it, or Shoppers, or anyone?

Q. That's right.

A. So why ask me?

Q. You don't know.

A. I am not interested. If I want I will look it up.

Q. In the period that you have been in business in this area, Mr. Fleishman, you have seen a man like Charley Futterman start off with a one store operation in 1948—Was that it?

A. 1946.

Q. —and grow to what size chain now?

A. Don't ask me, I don't know. I never followed him.

Q. You don't follow any of these things?

A. No. Why should I follow them? I know they have quite a few. I wouldn't know. They probably have ten or twelve or fifteen. I never follow them.

Q. And in that same period have you seen Joe Hughes start out?

A. Yes. I mean the only reason—I don't know how many [fol. 613] stores they got. But I just happen to like the guy, so I always say hello to him.

Q. He is Chairman of the Board of Certified?

A. But he is a nice guy, I always says hello to him.

Q. Are you acquainted with Ted Wood of Pantry Markets?

A. Don't even know, never heard the name.

Q. Never heard the name Pantry Markets?

A. Never heard Ted Wood. I heard Pantry. That is little markets, isn't it, Pantry Markets?

Q. No. They are supermarkets.

A. Never heard of them.

Q. Are you acquainted at all with Joe Goodnight who was with Alpha Beta up until about '58 or '59?

A. No, no.

Q. You don't know anything about Michael's Markets?

A. No.

Q. The fact is a number of people whom you know, or have read about in this area, have been able to start out in this period and to grow and have very successful operations.

A. If I make a comment on it about Shoppers—

Mr. Hughes: What period is this?

Mr. Alsop: In the period 1948 to the present time.

The Witness: 1946. Can I make a comment on it?

Mr. Alsop: Q. Surely.

A. You ask me how did Shoppers do, huh? I am going [fol. 614] to tell you something. At East 1st and Boyle was a very good store because they are the only ones, there were no chain stores around here. Because at that time Mr. Von, Mr. Safeway, Mr. Ralphs did not believe to go to any minority neighborhoods. Shoppers was the only one, a decent store in a minority neighborhood.

So, and if you recall, Ralphs was selling the stores out in minority neighborhoods, which they see they made a mistake. Now they want to go back to them, just like Safeway did.

So Mr. Shoppers, who just by sheer luck, the next store was Inglewood, and Inglewood nobody wanted it, nobody

wanted that spot. At that time they threw it at him, he had no money and he figured, "Nobody wants it, I will take a chance on it." It happened to be good. I mean that was the third one. The second one is in Santa Monica. They were in and out, people, until somebody bought the building and said, "Charley, I will remodel it for you, try it." He tried it and it worked out right.

But actually every one of the locations that Mr. Futterman got was turned away by every major chain in the city. Every one of the locations, they were no good. That is how he got it. But he could never get the location that the big boys got. He just lucky he got the location and it was good. [fol. 615] Q. If Ted Wood of Pantry Markets was able to start out in 1954 and build up a ten-store chain, he was just lucky too?

A. I don't know, I don't know. But I said that Shoppers was lucky with the locations because they were turned down by everyone.

Q. You have seen a number of people enter the business like Joe Hughes in the last ten, fifteen years and do well, haven't you?

A. Oh, sure.

Q. Just like yourself.

A. Well, I mean you don't compare me to Joe Hughes. You don't compare me to Hughes Markets.

Q. You have not been as successful as Hughes Markets.

A. You don't compare me with that.

Q. Do you have any idea, Mr. Fleishman, how many chains there are doing business in the Los Angeles metropolitan area?

A. You mean the ones I know? I could call them out and see if I got them all.

Q. Just the number.

A. I don't know. What do you call a chain, three stores?

Q. Two stores or more.

A. Well, I wouldn't know. There is a lot of them got [fol. 616] two stores now. I don't even know where they are.

Q. Do you have any idea how many single store operators there are in Los Angeles and Orange County?

A. No.

Q. Would you say several thousand?

A. I couldn't say anything. I don't know.

Q. You haven't made any study of the industry in that respect?

A. Well, I mean I don't—It don't interest me how many there are. I know how many in the Black Book, the one I follow. I mean the one I follow the prices on I could tell you every one of them.

Q. That is three or four?

A. There is four. In fact there are five now. Food Giant is a main factor too now.

Q. Some of the chains which are in the top eight, nine or ten weren't even in existence back in 1950, were they, like Hughes?

A. I don't know—1950, I think that is when Hughes started, isn't it?

Q. 1952, I think.

A. Well, I don't remember. There is ten chains that were not in 1950? I wouldn't know which one it is. I know most that I know were there in 1950. Were they in 1946? You probably know more than I do. I don't remember. Hughes [fol. 617] I know wasn't there.

Q. And you don't know anything about the Pantry Markets?

A. I never heard of Pantry.

Q. Or Michael's Markets?

A. Never heard of Pantry, never heard of Michael's.

Q. You have seen discount houses enter into this business in the last three years, haven't you?

A. I heard about it. In fact I will tell you the truth, I only saw one, and that was out in North Hollywood, out in the Valley, and I think it was Ben Schwartz' place. I don't know the name.

Q. Is that the big "A"?

A. The Bit "A", that is the only one I saw. I have never seen another one yet.

Q. You have heard that there are quite a few around the area, haven't you?

A. That is the only one I have seen.

Q. In the last three years there has been quite an influx of these bantam stores, like the Speedee Marts, hasn't there?

A. The only one I know is the ones that went broke. You

ask me their names, I don't know their names. They went broke, I know that. And I will tell you I know the people that owned them but I don't remember the name of the [fol. 618] outfit. There is a fellow named Lazarus, Sid Lazarus, and I forget the other guy's name. They went broke.

Q. They were people without prior experience in the grocery business, weren't they?

A. Oh, no. Lazarus was born and raised in the grocery business. He was a manager for Shoppers.

Q. Was this a Speedee Mart?

A. I don't know what he called it. I think it was Speedee Marts. There is one on Hoover and 8th Street, whatever it is, and there is one—I will tell you, there is another one on Sunset and Western, near Western, not far away from Western, on Harvard on the corner. But I don't remember their name.

Q. Your observation of the grocery business, I gather, is pretty well confined to the area where you operate; isn't that so?

A. What do you mean?

Q. Well, you are more concerned with what is happening in your immediate area and not what is happening down in Orange County?

A. I am not even concerned what is happening around me now either. There is nothing I can do about it.

Q. Do you recall telling me on June 21, 1961, that you have a number of friends in the grocery business who operate small stores who are constantly complaining to you [fol. 619] they couldn't compete with the chains successfully?

A. That's right.

Q. Didn't you tell me they are all wealthy men who have made it from operating small grocery stores and still operating profitably?

A. That's right. And own real estate. But you never asked me and I never told you. Did you ever ask me how many days they work a week—seven days a week—how many hours they put in in a day, what time they open, what time they close? Nobody ever gets to their register. They are the only ones that operate it from early in the morning until late at night. And if you figure their hours, \$3 an hour, it is the same as the union clerk gets. They could

accumulate a lot of money because they haven't got time to spend it.

Q. Yet you said that is the luckiest thing that ever happened to you.

A. To me, yes.

Q. That you got fired from Shoppers Market.

A. To me, yes.

Q. And you made more money in the prior five years than you had made in your whole life before that?

A. That's right. But I am the same guy. I work day and night for seven days a week. I have never taken a day off. I wanted to show myself that I could do it. I have done it.

[fol. 620] Q. And you have done it?

A. I have done it, right.

Q. You are putting your son through law school, you told me back in June.

A. That's right. I am putting my daughter through college, putting my son, everything. That's right.

Q. Didn't you also tell me that these various friends of yours would be mad at you for testifying as to the ability of the small store operator to compete——

A. No. They would laugh at me what I say.

Q. But nevertheless you believed strongly there was a great opportunity in the grocery business for the conscientious and able operator.

A. And putting in hours.

Well, let me tell you something. Here is the whole deal in a nutshell. I sold a store doing over \$20,000, the people were there for a year and a half, they went in October 1st, 1961, that is a year and a half, they had to get out already, they couldn't make it.

Q. They couldn't run it as well as you?

A. They couldn't make it. It is in escrow right now. And I know these two guys wouldn't last for another year. Maybe they will last a year. If they have enough money they will last another year.

Q. In the same period, Mr. Fleishman, you have seen [fol. 621] people start off like Eddie Fox in 1954 and try to build a big chain of stores overnight and go bankrupt, haven't you?

A. That's right.

Q. And you have seen McDaniel's expand very rapidly

and get into financial trouble and go bankrupt, haven't you?

A. Thank God for that.

Q. And the same with Yor-Way?

A. I don't know these people. I knew McDaniel's, that is why I said, "Thank God."

Q. There are failures among the big chains and there are failures among the small chains and single store operators.

A. No comparison, no comparison. You know, let's not fool ourselves. If Food Giant would come in across the street from me I have no chance. I could talk to the customers from today until doomsday, it wouldn't help me no more. I mean let's not fool ourselves.

Q. Yet you felt that the ideal location for you, if it were physically possible——

A. We were just talking.

Q. Wait a minute, Mr. Fleishman. I am asking the questions.

A. I will wait.

Q. You told me the ideal location for you if you could physically get there would be right between the Safeway [fol. 622] and Ralphs at 3rd and Vermont, did you not?

A. We will take the overflow. That is just talking, that is just talking. You know, just talking. You know what I mean. That is not sincerely talking, that is just talking. That is just talking. Anybody would come——

Q. You like to talk, don't you, Mr. Fleishman?

A. Anybody with common sense would know if I get in between Ralphs and Safeway and I will do business. And if you believed it that, as an attorney I don't think you did believe me even that. But I could be three blocks away from them and operate the way I am operating, I could make a living, a nice living too.

Q. You say in Paragraph 16 that you face very vigorous competition from Von's.

A. From Von's? I didn't specify just Von's.

Q. Look at Paragraph 16 of your statement.

A. I didn't say Von's. The only reason I figure Von's, they are coming in on 3rd and Western now. I figure that is just a walk. They don't need a car any more. They don't need a car any more, they can just walk over.

Q. That must be since the President's physical fitness

program, Mr. Fleishman. That would be quite a walk for me.

A. To Western Avenue? This man walks to the bank every day. He walks to the bank every day. And I got a lot of customers that walk to Ralphs. What would it bother [fol. 623] them walking to Von's? It is not any different.

Q. Have you seen any lessening in the vigor of competition?

A. You told me about No. 5; is that right?

Q. No, Paragraph 16.

A. 16? Okay, let me read it.

Well, I will tell you the truth, Paragraph 16, I don't know what he means, there is no intense price wars. I would only say that I anticipate when Von's opens up the market over there then Ralphs will be forced to build a new one too, then I will get it.

Q. Have you seen any lessening of competition in the grocery business generally in this area since March of 1960? Is it any less than it was before?

A. Same thing, no difference

Q. No difference?

A. No difference.

Q. Highly competitive?

A. You mean loss leaders? A lot of loss leaders, the same as there was.

Q. Vigorous competition?

A. Same thing, no different.

Q. In Paragraph 17, Mr. Fleishman, you refer to a number of acquisitions and consolidations in the retail grocery field since 1948. What acquisitions and consolidations did [fol. 624] you have in mind?

A. We know that Better Foods split up, sold to the Boy's Markets; right? Better Food.

Q. When was that?

A. Not Better Food. Better Foods split up with, I forget what the other one was called, whatever it is, they sold out to Von's—to Boy's Markets. That was about a year ago, isn't it?

I don't remember exactly. Well, all—Let's see, there was a lot of—Let me see. I can't remember offhand. Well, Von's and Shopping Bag merged, that was the largest merger. Let's see. I can't remember offhand. But we know there is

a lot of them sold out, one or two or three stores, to get out and got in. Oh, I mean I happen to know one guy over in Bellflower, Mayfair took it over from him. What's his name? We just mentioned. What's his name, the one who went to work for Food Fair—for Food Giant—we just mentioned his name—took over McDaniel's.

Let's see who else. I can't remember. There is quite a few that they didn't merge but they sold out. Actually it is merging. They took them in to work for them, McDaniel's. Al Wallin went in to work for Food Giant, didn't he? He went to work as their real estate man, or whatever it is. I don't know whether he is still there or not, but he did go in there.

[fol. 625] What is the difference if it is selling or merging?

Q. McDaniel's went into bankruptcy, did it not?

A. I don't know; I don't know.

Q. Didn't you know that before they went into bankruptcy they sold off a large number of their stores to single store operators and other chains?

A. Oh, no. Food Giant got the bulk of it.

Q. Food Giant got nine of them out of the bankruptcy court, didn't they?

A. I didn't know where they got it. If Food Giant got it out of bankruptcy court, why did they have to take Al Wallin to work for them? I don't even think he is there any more. Maybe he is still there.

Q. You don't know?

A. I don't know. And now I happen to think about Food Giant, didn't they take over all the stores from Panorama City—Panorama Markets? Wasn't that a merger or was it a straight out sale? They sold to Food Giant.

Q. I don't know.

A. I don't know either. But I know that Titlebaum or Tittleman, whatever his name, went to work for Food Giant too in the beginning. What happened later I don't know. He is not with them no more.

Q. How long ago was that?

A. That was about four years ago, three years ago.

[fol. 626] Who else? You want to get all the stores?

Q. Yes.

A. I am trying to think, you know. Didn't what's his

name, Phil Raisin—What happened to Raisin's Markets?

Q. They sold to Alpha Beta?

A. I don't know who they sold to. But I remember, didn't Raisin go to work for them, too, in the beginning?

Q. Didn't Raisin retain the liquor concessions in all the stores?

A. Yes. But Phil Raisin went to work for them too.

Q. You mentioned Mayfair. Do you know whether Mayfair has sold more stores in this area than—

A. I don't know. But I know in Bellflower they—I don't know if you want it on the record or not, either they were going to open up a store next door to a single operator or he was going to sell it to them and he sold it to them. He went to work for them. I think his name is Blau. If he is still with them I don't know. He is probably not with them any more but they've got the store.

Q. Do you have any knowledge whatsoever, Mr. Fleishman, that Ralphs intends to engage in any mergers?

A. Engage in what?

Q. A merger.

A. No, no.

Q. Or Safeway?

[fol. 627] A. No.

Q. Or Food Giant?

A. Well, I do, but I don't want to tell you now. I do, definitely so. And it's going to happen.

Q. Why don't you want to tell us now?

A. I just don't want to say it.

Q. Do you have any knowledge that Thriftmart intends to engage in future merger?

A. Well, that is what I am talking about, it is either Food Giant or Thriftmart is going. Someone is going to sell out to them. Someone is going to sell out to Food Giant or Thriftmart, and it's quite a nice chain.

Q. What is the basis of your knowledge?

A. Inside knowledge.

Q. What is that?

A. Well, somebody on the inside.

Q. What is it, Mr. Fleishman?

A. I don't have to say.

Q. Do you refuse to say?

A. I refuse to say, that's right. They are just waiting for it.

Q. You refuse to identify the person?

A. I would.

Q. Is it possible that in your reading of the various trade papers you refer to in your statement that you have seen [fol. 628] predictions that the discount houses are going to put the supermarkets out of business?

A. I didn't say that.

Q. I say, have you seen that in any of the trade papers which you read?

A. I don't think they ever will.

Q. That isn't my question. Have you seen those predictions in the trade papers?

A. You don't see it no more. You did see it in the beginning.

Q. My question is, have you seen articles to that effect in any of the trade papers which you have read?

A. I used to see but I haven't seen it lately.

Q. Do you recall telling me, when I talked to you on June 21, 1961, that you simply could not understand why the merger of Von's and Shopping Bag was being attacked by the government?

A. I did.

Q. In our conversation on the telephone in October of 1962, Mr. Fleishman, you told me that you had returned from a trip to Russia; is that right?

A. That's right.

Q. You said something about the Russians being a thousand years behind us in America in Food distribution. What did you mean by that?

[fol. 629] A. Well, they are.

Q. In what respect?

A. They haven't seen a paper bag yet. As long as I was there I hadn't seen a paper bag.

Q. How long were you over there?

A. Three weeks.

Mr. Hughes: I can't see the relevancy, Mr. Alsup.

Mr. Alsup: I was just curious.

Q. Mr. Fleishman, I want to make sure that you get on

that flight to Hawaii, and I hope you have a pleasant time in Hawaii and that you can rest your voice.

A. I will be talking there too.

Mr. Alsup: I have no further questions.

(A short recess was taken.)

Mr. Hughes: Mr. Reporter, I would like to have this statement entitled "Testimony of Jerry Fleishman" identified for the record as Fleishman No. 2.

(The document referred to was marked by the notary public as Fleishman Exhibit No. 2 for identification, a carbon copy of which is attached hereto.)

Cross-examination.

By Mr. Hughes:

Q. Mr. Fleishman, do you recall a conversation that you had with me in August 1961?

[fol. 630] A. That was after—Your name is Hughes?

Q. That's right.

A. Because I asked you if you were a cousin to Mr. Hughes.

Q. That is correct. Do you recall that conversation?

A. You mention one I will tell you.

Mr. Hughes: Would you mark this for identification as Fleishman No. 3, which is described as a sign—

Mr. Alsup: It is the sign which is in the picture.

Mr. Hughes: It is the sign which is in the picture marked Fleishman Exhibit No. 1, being the original.

(The document referred to was marked by the notary public as Fleishman Exhibit No. 3 for identification, and is attached hereto.)

Mr. Hughes: Q. Mr. Fleishman, do you recall the sign?

A. I do.

Q. Is this the same sign that is in the picture, Fleishman No. 1?

A. Same one.

Q. Do you recall when you gave this to me?

A. I don't remember but I must have given it to you if

you got it. You didn't take it off the window. I don't think I had it on the window when you come in. I had it in the back room. I don't remember.

Q. You do not recall handing it to me?

[fol. 631] A. I don't recall if I took it off the window or I had it in the back room. I don't remember. When was that, in August?

Q. August 2, 1961.

A. No, I didn't have it on the window already. I had it off the window.

Q. When did you take the sign down?

A. That is what I say, I took it off in July. So I must have had it in the back room.

Q. Why did you take it off in July?

A. It didn't do any good. I just told the attorney before it didn't do any good. I see I am just wasting my time explaining to these people. They didn't believe it anyway. I could tell them I am cheaper and cheaper, it don't mean nothing.

Q. Were you cheaper?

A. A lot of items. I tried to stay according to the book, according to the Black Book whatever the chains are I tried to follow them penny by penny and I had quite a few items cheaper yet.

Q. Can you recall—

A. I had boiled ham for 89 cents sliced. None of the chain stores ever put out boiled ham. They get \$1.75 for it or \$1.59. That is robbing the public.

Q. When was this picture taken, Fleishman No. 1?

[fol. 632] A. Probably when I first came there.

Q. Did you take this picture or Mr. Alsop?

A. I never took the picture.

Mr. Alsop: It was taken in either June or July of 1961.

Mr. Hughes: Q. Do you recall any changes in the price structure in the grocery industry in this area in about July 1961?

A. Oh, yes, I think there was. Let me try and remember what happened that time. I remember there was a price change. They took off—The chains took off a lot of their loss leaders at that time. Anything they were selling under—I think a law went into effect that you could not limit

specials. I mean if anybody walks in and if you got coffee for 39 cents they could take all the coffee off the shelf and you can't do nothing, no limit. I think at that time the chains went ahead and they raised their prices so they did not sell below cost. I mean their specials did not go below cost.

Q. I would like to show you an exhibit identified as Palmer No. 1. Can you identify that exhibit? Do you recall that?

A. I mean that was done every week. Every week the same thing. The regular prices, regular shelf prices?

Q. Is there anything unusual about the prices advertised in that particular ad, Palmer Exhibit No. 1?

[fol. 633] A. You mean the price slashes? I don't know exactly what you mean. Well, what I was trying to say, I didn't remember exactly when it was, but that is the time when they went ahead with our regular daily price—our regular daily prices because they could not sell at that time.

As I say, if anybody walked in and they had sugar for 39 cents they could have taken all the sugar off the shelf. So what they went ahead and did, they put on daily, let's say, daily prices on everything, all the staples went at almost cost.

Q. What is the date of that newspaper, Palmer No. 1?

A. Let's see. July 13, 1961.

Q. And you state that those prices—Are they unusual?

A. Sure they are unusual. They are just at cost. These are just cost. These prices are at cost. That is when it started.

Q. Did that have anything to do with your taking the sign down?

A. I couldn't. There was no use telling my prices. I wasn't going to put sugar and flour and all these prices, that is all cost price. Campbell soup, sugar, milk, all that is regular price.

Q. Did you follow those prices?

A. No, I couldn't.

[fol. 634] Q. Then you weren't—

A. I took the sign off at that time. When they went in I took the sign off. They still got milk two for 29 cents. I still get two for 33 right now. I never changed it. But they still get two for 29, or maybe they get it two for 31 now.

But I know they don't get two for 33, and it is only six per cent profit on two for 33 buying from Certified.

Q. When this sign says, "Our Shelf Prices Are As Low Or Lower Than Any Chain Market," was that true?

A. No more. I took it off.

Q. And it isn't true today?

A. I couldn't. And let me tell you—Can I add on something?

Q. Yes.

A. Even if I wanted to do that, if I leave that sign and go ahead according to their prices I still cannot sell more than a case of milk a week. I can't advertise it. Even if I sell it two for 29 I still can't sell more than a case a week.

Q. In your response to questions from Mr. Alsup you stated that you had made money for the last five years in the grocery business, that is prior to June 1961.

A. I sure did. I am making money now too. I am making money now too.

Q. You started to say you would have been better off—  
[fol. 635] A. What?

Q. —if you realized something. Would you have been better off if you—

A. If I would what?

Q. Let me strike that question.

Mr. Fleishman, there is one thing I would like you to clarify. You stated that Shoppers went into minority neighborhoods. Do you mean Negro and Mexican neighborhoods?

A. Mexican neighborhoods.

Q. You stated you did not advertise through Certified.

A. I did not.

Q. Why not?

A. Because I couldn't afford to advertise through Certified.

Q. What do they advertise through?

A. Who, Certified? They use their own hand bills, And the reason why I couldn't use it, which is not expensive, but you see in order to pay for that hand bill, let's say Nestle wants to advertise their cocoa, just for example. If I don't have Nestle's I have to take it in. So then I have to take in every item that is advertised. Because if the people come in and I have an ad out that says "Nestle's Cocoa," where

is the Nestle's Cocoa. Well, I don't have it. So what is the use advertising? So I can't advertise what they want me to so I am better off not to use it.

[fol. 636] Q. Do you ever buy any produce after the market closes?

A. I used to when I was on Pico, not here. I don't handle produce in this store. But I used to buy when I was in Pico.

Q. In your direct testimony, when Mr. Alsup referred to McDaniel's going out of business, you said, "Thank God for it."

A. Why?

Q. Why?

A. I once bought a delicatessen from him on Whittier Boulevard and after I bought the delicatessen he stole the knives.

Mr. Hughes: No more questions, Mr. Alsup.

Redirect examination.

By Mr. Alsup:

Q. I have just one more question, Mr. Fleishman. You are leaving for Hawaii tomorrow?

A. Yes.

Q. Are you sailing or flying?

A. Flying.

Q. Have a pleasant trip.

A. Thank you.

Mr. Hughes: For the record, Mr. Fleishman, is it permissible, that is would you waive signing this deposition [fol. 637] which the reporter is taking, if it is agreeable to counsel?

The Witness: If I want to sign?

Mr. Hughes: Would you waive signing it?

The Witness: You mean not signing it?

Mr. Hughes: Not signing.

The Witness: I don't have to sign. That is my privilege, to sign or not to sign. So it doesn't make any difference.

Mr. Vaughan: That is agreeable to me.



[fol. 637b] IN THE UNITED STATES DISTRICT COURT

Honorable CHARLES H. CARR, Judge Presiding

No. 336-60-CC Civil

[Title omitted]

Place: Los Angeles, California

**Transcript of Proceedings—June 11, 1963**

\* \* \* \* \*

[fol. 638] TESTIMONY OF MANUEL GERTMENIAN

If subpoenaed to testify, Manuel Gertmenian would testify as follows:

1. He is the owner of Gertmenian's Market, 301 South Atlantic Boulevard, Alhambra, Los Angeles County, California and also a Gertmenian's market in Pasadena. He acquired his Alhambra store in May of 1960, and its 1961 sales were approximately \$1,000,000. The 1961 sales of his Pasadena store were about \$780,000. He has been in the retail grocery business for approximately 35 years, except for a period from 1942 until 1946 when he was a produce merchant in the area.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Gertmenian closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all of the major chains appearing in these booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin", "Super Market Merchandising", "Chain Store Age" and the "Progressive Grocer."

[fol. 639] 3. On the basis of his continued study of retail

grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many [fol. 640] more people than they did in the past. As a result fewer grocery stores are needed in the area to serve a comparable number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at these warehouses, and operate large trucking facilities. As a result they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, and advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from a cooperative group known as Orange Empire and this enables

him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Thus they have combined the [fol. 641] advantages of the cooperative with direct purchasing and a highly developed distribution system. In addition some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. [fol. 642] He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha

Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the lines and the stores are known as "Von's & Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces [fol. 643] very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

[fol. 644] Deposition of MANUEL A. GERTMENIAN, taken on behalf of the Defendants, at 433 South Spring Street, Los Angeles, California, at 1:45 P.M., Thursday, April 18, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

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MANUEL A. GERTMENIAN, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Alsop:

Q. Mr. Gertmenian, would you state your name and address, please.

A. Manuel A. Gertmenian. I live at 1386 Boston Street in Altadena.

Q. What is your business address?

A. 1720 East Colorado, Pasadena.

Q. You have another grocery store in Alhambra?

A. That's right, sir. 1301 South Atlantic.

Q. Is that 1301 or 301?

A. 301. I am sorry. In Alhambra.

Q. You have in front of you a copy of a statement entitled "Testimony of Manuel Gertmenian" which the Government has furnished to us, have you not?

[fol. 645] A. Yes.

Q. That statement says, Mr. Gertmenian, in Paragraph 1, that you have been in the retail grocery business for approximately 35 years, except for a period from 1942 to 1946 when you were a produce merchant in the area.

A. I would like to make a little correction over there. Perhaps you know—I don't know if you know my history in the business or not—but in this particular period there were times where I had markets but I only operated the produce department until 1940. Then in 1946 I took the grocery departments in my stores. At that time Fitzsimmons, which is Thriftmart now, had the grocery department in three of my markets. I have been actually in the grocery business as a whole since '46.

Q. You were in the grocery business when you were simply running the produce department, too, weren't you?

A. I would consider it so.

Q. When did you start running the produce department in a grocery store?

A. Well, in 1927—January of 1927.

Q. Where was that store located?

A. On Washington Street there, 1778—in that area, between Washington and Allen.

Q. That was in Pasadena or Altadena?

A. Altadena.

[fol. 646] Q. Thereafter did you open a produce department in some other grocery store?

A. Well, I moved on Colorado Street in the vicinity that I am now and built a market on the corner of Meredith and Colorado.

Q. Do you remember the address of that?

A. It was 1728 East Colorado, next door to the store that I am now.

Q. This market that you built, was that a produce market?

A. No, it was a complete market, operated as Gertmenian's Market but I had other tenants in there.

Q. You ran the produce department and had other tenants running the grocery department—

A. And meat and bakery.

Q. When was it that you built this market on Colorado?

A. 1932.

Q. Did you operate the produce departments in any other grocery stores in that period?

A. In '36 I built on Washington and Allen Gertmenian's Market. And also in '38, in Monrovia, 1305—I mean 608, I believe it was, South Syrtle.

Q. These are stores which you built?

A. That's right.

Q. And you leased out—

[fol. 647] A. Two of them I built myself and one was built for me and leased to me, yes.

Q. Which one was built and leased to you?

A. The one in Monrovia.

Q. And this one in Monrovia, did you run the produce department and lease out the grocery and other departments?

A. Same thing, that's right. I had Fitzsimmons in all the three grocery departments.

Q. After that did you have any other grocery stores?

A. Yes. I had one on Washington—I mean Lake near Washington in Pasadena.

Q. Was that a grocery store?

A. Yes.

Q. When did you open that one?

A. That was in '47.

Q. I think you said in 1946 you took over the grocery departments in all of the stores; is that correct?

A. Not all of it, because I didn't have them all. During the period that I was out of the grocery business I sold two of the markets. The only one that I had was the one on Colorado Street, 1728, at the time.

Q. Which ones did you sell?

A. Sold the store on Washington and Allen and also in Monrovia.

Q. Whom did you sell the one at Washington and Allen [fol. 648] to?

A. To William Pampeyan.

Q. Who did you sell the one in Monrovia to?

A. Actually my lease ran out of there and Mr. Hughes of the Thriftmart at that time took the lease over, or Fitzsimmons Stores, really.

Q. Fitzsimmons had been in this and then later Thriftmart running the grocery department and after your lease ran out—

A. They overbid me and threw me out of there. That is what it amounted to.

Q. How about this one at Lake and Washington?

A. I sold it out.

Q. To whom?

A. To a fellow named Long. I don't remember his first name now.

Q. Do you know if that is still being operated as a grocery store?

A. No. It went out of business. He went broke in it.

Q. How about the one at Washington and Allen, is that still being operated?

A. It is not in the same building but they built adjacent to the property and it is still being run there.

Q. How large was this market you had at 1728 East Colorado?

[fol. 649] A. It was 80 front and 70 deep. That would be about 5600 square feet.

Q. How large was this store at Washington and Allen?

A. That is 72 by 90.

Q. How large was this one in Monrovia?

A. The one in Monrovia was the largest one of them all, it was 72 by 110, if I am not mistaken. That is as close as I can remember.

Q. How about this one at Lake near Washington?

A. It was a store about 70 by 50 I would say.

Q. When you built your store at 1728 East Colorado, that was in 1932; right?

A. Yes.

Q. Was it before or after that that this store which you now have at 1720 East Colorado was built?

A. They occupied their building in February and I occupied mine in May of the same year. I may be mistaken in one year. It could be '33. I can't remember exactly. I think Market Basket started just about that time, around '33 I think it was.

Q. And you and Market Basket occupied stores almost immediately adjoining each other; isn't that right?

A. Yes. Except they weren't a big chain at that time.

Q. They started as a single store operation; isn't that right?

[fol. 650] A. Yes. That was their—They actually were on the corner and they built this one and later on called it store No. 1, and the one that they had on the corner they called it an annex. In fact within one block they had two stores and I was in the middle of them.

Q. Market Basket got started in 1932 or 1933 with this one store operation; that's correct?

A. That's right.

Q. And that was their headquarter store?

A. That's right. They had their offices up there.

Q. And then Market Basket over the years has grown to what size chain now?

A. In the neighborhood of 45 stores or more, in that area. I am not exactly sure.

Q. So far as you know Market Basket is not engaged in any mergers or consolidations?

A. Well, the last merger they were going to go to was the Lucky in the Bay Area, but somehow or other it didn't go through. I don't know what happened.

Q. There were talks about that back in 1959?

A. That's right.

Q. And they fell through; isn't that right?

A. There were several articles in the papers about it, the magazines.

Q. You don't know why they fell through?

[fol. 651] A. No, I don't.

Q. But Market Basket has grown to its present size without engaging in any mergers; isn't that correct?

A. As much as I know, yes.

Q. You took over that Market Basket headquarters store in 1947, was it?

A. I would say that was almost ten years ago. It would be '53 I took it over.

Q. When you took that over did you close your store at—

A. Yes.

Q. —immediately next door?

A. That's right.

Q. What is the size of that former Market Basket store which you occupy?

A. It is 80 by a little over a hundred feet deep.

Q. About 8000 square feet?

A. I would say so.

Q. Have you enlarged it since you took it over from Market Basket?

A. We enlarged it to the point that we tore out some walls and set back the office. I mean other than that we didn't add to the building itself. But we created more room on the floor space, let's say, than it had before.

Q. How much of this 8000 square feet would you say [fol. 652] represents selling space?

A. Oh, I would say about six, seven. It could be a little less, though.

Q. You say you took it over in 1953 from Market Basket?

A. That's right. Not from Market Basket, no.

Q. Market Basket had been the lessee of the property.

A. Yes. But I mean I dealt directly with the landlord.

Q. What was your investment in that store?

A. Well, I moved most of my—originally I spent some \$27,000 remodeling before we got in there. We put a front on it, which it did not have before, closed in the market, and then we relaid all the electrical cables in the market, which were too old and had been there too long, and the water lines, and did a certain amount of remodeling like renewing some walls and moving some of the office part, made a little shorter, and set it up that way. Then we moved most of our equipment from the other store over and bought some other equipment, put some new ones in there.

Q. This represented about \$27,000?

A. No. That was only what we spent for remodeling. And then we put approximately that much in equipment, new equipment, plus our merchandise and what we had on hand which didn't have too much book value actually, but you might say that it might have been worth something, like [fol. 653] registers and check stands and a few other things.

Q. It is common, as a matter of fact, and only good business in the grocery business to depreciate your fixtures and equipment so that they might not have any book value but they might have considerable actual value?

A. That's right. We were there for some 23 years next door so some of that stuff was definitely not represented as investment there.

Q. Do you have any recollection, Mr. Gertmenian, what your personal net worth might have been then in '53 when you took over this former Market Basket store?

A. I would say in the neighborhood of perhaps \$50,000 in that particular business.

Q. You mean your total personal net worth at that time in '53?

A. Without the business, you mean?

Q. Counting the business and everything else what was your net worth?

A. Oh, I would say in the neighborhood of one hundred thousand or so.

Q. Had most of this net worth been made from your prior work in the grocery business?

A. Yes; all of it.

Q. Can you tell us what your net worth is at the present time?

[fol. 654] A. Well, it might be a little bit more. The fact is I suppose if I did close up today and sold my fixtures and so forth it won't be worth very much. But it has certain values while it is there. Let's put it that way, that I would say that maybe it is about one hundred fifty.

Q. \$150,000?

A. Including my personal home and other things.

Q. And all of this you attribute to your work in the grocery business?

A. That's right.

Q. Can you tell us what the sales were in this store the first year you took it over?

A. Which one?

Q. The former Market Basket store.

A. In the neighborhood—One thing I would like to make at this point, I have a meat man there, Mr. Meyers, and he has been with me ever since for the last some 32 years, I think he has been with me. And in that particular store we did not operate the meat department. I would say mine was in the neighborhood of \$750,000 the first year.

Q. What were they last year in 1962?

A. Last year in the neighborhood of not quite a million dollars. And I would say about \$900,000 or so.

Q. And that doesn't include the meat?

A. No.

[fol. 655] Q. Over this period of time I am sure this is true, you continued to repaint and do whatever remodeling in keeping the store attractive that was necessary to do, haven't you?

A. That's right.

Q. And over this period of time your business has grown to some extent and you have made profits from it; isn't that right?

A. That's right.

Q. This statement which was given to us by the Government, which you have in front of you, says that the '61 sales of the Pasadena store were about \$780,000. You said here that the '62 sales were about a million.

A. No, this is one store and then the other.

Q. This statement says the Alhambra store had '61 sales of about a million.

A. This is a mistake that I called to the attention of the attorney. It is vice versa, sir. The Pasadena store is the one that does approximately a million dollars and the Alhambra store was \$780,000, I believe.

Q. What were the sales of the Alhambra store in 1962, Mr. Gertmenian?

A. It is not quite \$800,000. Pretty close to it. Our quarter is around \$200,000, a little less off and on.

Q. It has gone up somewhat?

[fol. 656] A. No. As a matter of fact it is a little slower now than it was.

Q. In '62 it had gone up a little bit over the \$780,000 in 1961?

A. Yes, that's right.

Q. As a matter of fact, Mr. Gertmenian, it had gone up very substantially more than the sales of the prior tenant of that Alhambra store had.

A. That's correct.

Q. Do you know what the sales of the prior tenant in that Alhambra store were?

A. I don't exactly know, except that he claimed he was doing a certain amount but I doubt very much if he was doing it at the time I bought it. And at that time he claimed that he was doing between forty and forty-five thousand a week in there, which would mean—Well, you can figure it yourself. It would be about half a million dollars or so, roughly.

Q. Do you mean a week or a month?

A. A month.

Q. And you were able to increase the business that he was able to do very substantially because of your own hard work and the experience that you had had in the grocery business; isn't that right?

A. To a certain extent, yes.

[fol. 657] Q. And your sales at this Alhambra store have produced a satisfactory profit for you, have they not?

A. They have not, no.

Q. Despite the fact the sales have gone up substantially over those of the prior operator you have not had a satisfactory profit?

A. No.

Q. Have you had any profit?

A. Up to now, no. We are getting very close.

Q. Do you expect to make a profit on it?

A. I hope to sometime, yes.

Q. Do you expect to?

A. That's right.

Q. How many employees do you have in your Pasadena store?

A. I think we have—all in all I think there are 16, including some box boys, in that group.

Q. How many employees do you have in your Alhambra store?

A. We have 12 there.

Q. What is the size of that Alhambra store?

A. It is a building 75 by 90.

Q. How much of that space would you say is selling space?

A. Oh, I would say about 70 per cent of that, approximately [fol. 658] mately.

Q. Somewhere in the neighborhood of 4000 to 4500 feet?

A. I would say something in that neighborhood.

Q. What did you consider the draw area of your Pasadena store, Mr. Gertmenian?

A. Well, in our drawing area right there would be at the present—we were the only ones in that area. Naturally we went up to Orange Grove on the north and I would say that we would go as far as Sierra Madre on the east and up to Hill Avenue on the west and California on the south. That would have been most likely where I would draw from.

Q. That was in 1953?

A. Yes.

Q. Is that true at the present time?

A. It is, except that we are going to have some competition with Safeway coming in a little further on and also Von's I understand out there have a permit to build on Sierra Madre, on Del Mar, I think. So that's going to—

Q. How far away from your Pasadena store will this Safeway Store be?

A. About a mile.

Q. How far away from your Pasadena store will this proposed new Von's Store be?

A. About the same distance, perhaps adding a couple [fol. 659] of more blocks to it.

Q. And in a different direction?

A. No, same direction. They are building within two blocks of Colorado Street where Safeway is on Colorado Street. They bought the Fox Market, if you know. And, of course, Von's have gone into this other area there.

Q. Is there a Market Basket on Sierra Madre—

A. No.

Q. —just north of Colorado?

A. Yes. In Lamanda Park. That would be a couple—three blocks the other way.

Q. What other stores, if any, have come into this area which you have described, Orange Grove on the north, Sierra Madre on the East, Hill on the west and California on the south, which you described as your draw area, since 1953?

A. There isn't any.

Q. What stores have gone out of business in that area since then?

A. Well, there was several little ones. There was a Safeway Store originally on Allen and—it is Del Mar now. At that time it was Blanche when they went out. They had one of their small stores, which they were discontinuing. And I don't exactly know the time but they were there one time, they built that building there. I don't know how far [fol. 660] back. There was another one the other side of Hill, which wasn't considered my territory. Actually there hasn't been any more markets in that close area.

Q. There has been little change one way or the other in that area?

A. That's right.

Q. Has that neighborhood changed much since 1953, Mr. Gertmenian?

A. I had one disadvantage there. Where the school took on several blocks of the property on, between Del Mar and Bonnie, for parking where they removed about 150 of my families out of there.

Q. That is families that traded at your store?

A. That traded at our store. It had quite an effect on our volume at the time. That happened last year.

Q. So basically you have seen little change in the com-

petition except this Safeway Store closed up, up to the present time, and there has been little change in the neighborhood other than the fact that you lost about 150 families through this school; is that correct?

A. Well, there is one fact that remains. One of the larger markets farther down in Lamanda Park, which was one time Jax Market, and later on I think Ted Cummings took it over for a while, and I think later on it was taken by Mayfair, if I am not mistaken, and then Shopping Bag had it for a [fol. 661] while. And those were the changes.

Q. And then Alpha Beta had it for a while?

A. No. Shopping Bag, I think, was the last before Crawford. There was a Cal Fair after Shopping Bag. That is what I mean. And then Crawford's are there now. I mean those were the changes that happened over there.

Q. That change occurred at the market on San Gabriel Boulevard and Colorado?

A. That's right. Which is quite a ways.

Q. And which is quite a ways east from where you consider your draw area.

A. It is about a mile and a half, although we do draw from that area some.

Q. That market changed hands from chain to independent to chain to independent and back to small chain.

A. That's right.

Q. With respect to your Alhambra market, Mr. Gertmenian, did you buy the lease there?

A. I bought the property as well as—

Q. You own the land and the building?

A. That's right.

Q. What was your investment?

A. \$115,000 is what I paid including fixtures in the store at the time. I added on quite a bit, like we had a house in the back and we moved it out. We spent another \$35,000 [fol. 662] for cleaning up and new equipment and such. \$150,000 overall.

Q. This \$150,000 which you spent represented your entire net worth then at the time; is that right?

A. Approximately, yes.

Q. And it was borrowed money?

A. Borrowed money some of it, yes.

Q. Whom did you buy the market from?

A. A fellow named Sercombe, Herbert Sercombe.

Q. Had he operated the market prior to the time you bought it?

A. Yes.

Q. How old a store is that? Do you have any idea?

A. I have the feeling that it has been in there for the last 25-30 years. I am not too sure though. I seem to think of seeing it. I think Crawford had it one time years back. I don't know how long but it has been many, many years ago.

Q. How old a man is Mr. Sercombe?

A. About my age. In the neighborhood of 53 or 54 or so.

Q. Do you know what he is doing now?

A. He has another little place in the Arcadia area, I understand.

Q. Did he have it at the time or did he open it up?

[fol. 663] A. No, just very recently, about six or eight months ago I understand.

Q. Directly across the street from that market—By the way, you bought it in May of 1960?

A. '61.

Q. '61?

A. Yes. It is three years in May. It would be '61, right?

Q. No. Three years in May would be 1960?

A. Okay. Let it be '60 then.

Q. When you bought that store you looked over the area pretty carefully to see whether or not in your opinion you could make it a profitable operation, I gather, did you not?

A. That's right.

Q. You studied the area from which potentially you could expect to get customers; is that correct?

A. That's right.

Q. You observed that directly across the street was a very new and very large Safeway Store, did you not?

A. Yes.

Q. And you had no doubt of your ability to compete successfully with that Safeway Store, did you?

A. Yes, I didn't have any doubt.

Q. You had no doubt of it?

[fol. 664] A. That's it. I could operate against them, yes.

Q. What other stores did you observe in the vicinity of this market?

A. The closest one was Ralphs after Safeway, and then

Crawford's quite a ways down on Valley there. And that's about all. There were a couple of other small ones like Carpenter's and Fisher's, they were within a mile area there.

Q. Where was this Ralphs located?

A. On Main Street there, about a block from Atlantic I mean. It would make it approximately four blocks in the front and three blocks in the back from our store.

Q. Roughly a mile away?

A. Not quite, no. Less than half a mile I would say.

Q. Wasn't there a Von's Store?

A. Not in that area at that time. They came in this last year.

Q. In the last year?

A. Yes.

Q. And this Carpenter's Store that you said was there in Alhambra, is that Artie L. Carpenter?

A. I don't know. All I know is Carpenter's.

Q. It is located on West Main Street there in Alhambra?

A. Yes.

Q. Did you notice a little further down on Main Street the Star Market?

[fol. 665] A. Yes.

Q. Did you regard that as within your draw area?

A. I thought they were too far away.

Q. You felt Carpenter's was closer?

A. Closer, yes.

Q. And Ralphs was even closer?

A. That's right.

Q. And Crawford's was about the same distance?

A. Well, I think they are a little further.

Q. About a mile and a half?

A. No. I would say less than a mile. Ralphs is really within three blocks of our place. It is not too far away.

Q. Yet you felt when you decided to make this investment of substantially all of your net worth that you could compete with the Safeway right across the street, this Ralphs three blocks away, the Crawford's less than a mile away, Carpenter's and Fisher's and do well; is that correct?

A. Yes. Conditions have changed in three years. It started changing then, in fact.

Q. Yet you said earlier you expect to do well at this store.

A. That's right.

Q. Since you opened your store Von's has come in on Main Street in Alhambra?

[fol. 666] A. That's right.

Q. Has a discount house opened up in your trading area?

A. That's right.

Q. What discount house is that?

A. Unimart and Food Giant.

Q. It has a large supermarket in it?

A. That's right.

Q. What other changes?

A. Those are the two main ones. Of course, Ralphs has come on Huntington and Atlantic up north. They finally pushed that through against the wishes of the people.

Q. They got a zoning permit. They haven't started to build yet, have they?

A. That's right.

Q. You are talking about my area now, Mr. Gertmenian. How far is that from your Alhambra store?

A. I would say a mile and a half, but it's on the same direct road which the traffic goes.

Q. That would be right on the corner of Huntington and Atlantic?

A. That's right.

Q. Any other changes?

A. Not that I know, sir.

Q. When was it that Von's came in? Last year, you say, in '62?

[fol. 667] A. Yes.

Q. And this Unimart just opened, hasn't it?

A. That's right. About five or six weeks ago.

Q. Mr. Carpenter testified the other day that Unimart might actually help his business. You don't expect that, so far as your business is concerned, I gather.

A. No, I don't think so.

Q. Do you emphasize the produce department in your grocery store?

A. Yes, I do.

Q. You try to have the best quality produce?

A. Not specially the best quality, perhaps, but the best accepted in the particular area. We use a little better quality in the Pasadena store than we do in Alhambra. We

feel what the public wants and I always give them what they want.

Q. As you said, your produce in your Pasadena store is a little higher price than in your Alhambra store?

A. At times, yes. If it's a different quality. If it is not it is the same. As a whole we hold our prices very close together.

Q. Who buys your produce for you?

A. I have a brother that goes in and I go in once a week into the commission houses, yes.

Q. Since you entered in the business in this area in [fol. 668] Alhambra, the old Commonwealth Market, you have changed the name to Gertmenian's, haven't you?

A. That's right.

Q. What stores, if any, in what you regard as your trading area have you seen go out of business?

A. In that area you are talking about?

Q. Yes.

A. Well, the only one that went out was the Gateway Store on Valley. They were closer to Crawford's than they were to me, about two blocks or so.

Q. Did they close that store?

A. They closed it up, yes.

Q. Did anyone else open it up?

A. No.

Q. Gateway is a chain of about eight or ten stores, isn't it?

A. That's right.

Q. That is the only change that you have seen in this period?

A. That has gone out?

Q. Yes.

A. Well, of course, you know about McDaniel's and Yor-Way. Of course they are not in my territory but they have gone out.

Q. Let us talk about McDaniel's and Yor-Way. I suppose [fol. 669] you read the trade papers pretty carefully, do you not?

A. Yes, very much. I keep up with them.

Q. And you are aware, are you not, that over the period of the last ten or twelve years McDaniel's expanded very rapidly up to about a 24-store chain, didn't they?

A. Yes.

Q. And from your reading in the trade papers did you see reports that it expanded much too rapidly with a lack of capital and got into trouble?

A. That's right.

Q. Before it went into bankruptcy McDaniel's sold off a number of its stores, did it not?

A. That's right.

Q. To single store operators?

A. Well, not necessarily. I think Mr. Hughes bought two or three of them, I believe, and then the others, yes. And some were closed, I think.

Q. Did you ever drive out the San Bernardino Freeway and see that McDaniel's Market advertised for lease out there?

A. Now, you mean?

Q. Yes.

A. No, I haven't.

Q. Then after it went into bankruptcy the remaining stores of the McDaniel's chain, I think there were nine of [fol. 670] them, were there not, that went to Food Giant?

A. I don't remember the exact number, but some did.

Q. You mentioned Yor-Way. That is another instance, isn't it, Mr. Gertmenian, of a chain that started, I think, in '53 and '54 and expanded very rapidly?

A. That's right.

Q. Then they got in financial difficulties, did they not, after the death of Mr. Kennedy?

A. I believe so, yes.

Q. It also went into bankruptcy?

A. Yes.

Q. And its stores were sold off to various individuals and small chains, were they not?

A. That's right.

Q. And all this has been since 1960; isn't that true?

A. Right.

Q. In this same period you have read about since 1960, you have read about the Fox problem, have you not?

A. Yes.

Q. Do you recall from your reading that Mr. Fox left Mayfair in 1954 and started out to build a chain of his own?

A. I know about the setup pretty well, yes.

Q. And he bought up a number of old stores of other con-

cerns, including Ralphs and others, did he not, and Mayfair?

A. I don't know about Ralphs, but I know he did buy.

[fol. 671] Q. Some from Mayfair?

A. Mayfair and some from others.

Q. And he bought the Iowa Pork Chop chain?

A. That's right.

Q. That was a chain of about five or six stores, was it not?

A. Yes. Lamar's and others.

Q. And this is another case where a man expanded much too rapidly on inadequate capital and got into financial trouble; isn't that it?

A. That's right.

Q. And he went into bankruptcy?

A. Correct.

Q. And various of the Fox Stores were sold off, were they not, to individuals and small chains and then what remained of them I think 18 were sold in bankruptcy to Food Fair, weren't they?

A. That's right. I don't know if the number 18 is right or not, but I thought they bought whatever was left.

Q. And this is the way that Food Fair entered this market.

A. In this area, yes.

Q. It is a large national chain and it had not been doing business in this area prior to that time; is that right?

A. That's right.

[fol. 672] Q. This is something that has occurred within the last year?

A. That's right.

Q. Also since 1960, Mr. Gertmenian, based on your continuing study of the changes in the marketing conditions, have you seen discount houses spring up all over the area?

A. Not as much as they were before.

Q. They have slowed down somewhat now?

A. They have slowed down, that's right.

Q. But there were hardly any, if any, in 1960 or 1959, rather, were there?

A. No, not too many. But they were all going into it, Thriftmart and Food Giant and others. Although they didn't come in our area very much. In other words, this one here that is now is the only one that has moved into, you

might say, the San Gabriel Valley, providing you consider Pasadena and Alhambra and San Marino.

Q. You wouldn't consider West Covina in the San Gabriel Valley, would you?

A. That is what I mean. In our area they didn't come.

Q. There are about six discount houses in West Covina alone, aren't there?

A. That's right.

Q. Some of those discount houses have supermarkets which are run by Food Giant?

[fol. 673] A. That's right.

Q. And some have supermarkets which are run by Thriftmart?

A. Thriftmart, right.

Q. And some have supermarkets which are run by Ben Schwartz, you have heard of the Big "A"?

A. Yes. I am not too sure of him, no.

Q. And the White Front Discount House has supermarkets?

A. Right.

Q. They are run by the Fredericks, aren't they?

A. More or less. I am not too sure, sir.

Q. In the same period have you seen bantam stores come into the metropolitan area? That is like Speedee Mart and Pronto Markets and Tiny Tim's?

A. Well, mostly in San Diego County. They started not too many around here that I know of.

Q. Basically your study of the area has been confined to the Pasadena area where you do business and the Alhambra area where you do business; isn't that correct?

A. Not necessarily. I would say most of the Los Angeles area. I am fairly well acquainted with quite a few of the operations like Thriftmart and Hughes. I know those people personally. And Von's I know and Shopping Bag, which wasn't only in our area but other areas. I knew when they began and so forth.

[fol. 674] Q. Have you made any particular study of Orange County?

A. Not a special study. But I would say I know fairly well what goes on there.

Q. That is a case just like Los Angeles, where the population is increasing tremendously and more and more stores

are being built all the time to serve the increasing population; isn't that right?

A. More than they can stand, yes, in my estimation. I mean they are building faster than the population is growing.

Q. You have seen studies reported in the various trade bulletins which indicate the population explosion, I think it is called, will continue for years to come; isn't that right?

A. That's right. Although some areas it hasn't proven so, like in our Pasadena area. We haven't had no explosion of population. Actually it has just about one per cent a year.

Q. Yes.

A. And we haven't had too many increases in supermarkets and Pantry and Von's and Shopping Bag, and we are having a Cracker Barrel and a few others come in. I mean where there really isn't enough for them now to divide up what there is, but they are coming in. I don't know when they expect to have the population in that area increase.

[fol. 675] Q. You are right, Pasadena is pretty well built up.

A. That's right.

Q. And you can't expect any great increase in population in that area in the future; isn't that right?

A. That's right. And also San Marino is the same way, you are limited unless you go into apartments, which the city will not go into. And those areas are limited. Yet Von's is coming right into that area regardless.

Q. Von's is coming into——

A. They are coming on Del Mar and Sierra Madre Boulevard, which the people in the area do not want them. The merchants on Colorado Street do not want them. We have all this Colorado Boulevard wide open for business property and half of it is empty and they are going to a private area. The little guy can't get in there and do that. They couldn't go and ask our supervisors to put us through there, and yet they can go. I don't know with what promise, or what. This is off the record maybe. But they can get this thing through, getting it through a residential area which is, I presume if you live in San Marino, you talk to your neighbors and see how they feel about it.

Q. That is not in San Marino.

A. It is County but it is right between Pasadena, in that area.

Q. This area that you are talking about, wasn't there [fol. 676] a grocery store there before?

A. A little tiny store. Do you realize how many beautiful homes they are going to tear up before they get into that?

Q. That is not an area of which you call beautiful homes on Sierra Madre Boulevard?

A. Most of them are. The fellow next door, Adams, has a very beautiful home.

Q. And Ralphs is going in on Huntington and Atlantic?

A. That's right.

Q. And you said Pantry has been coming into the area?

A. Yes.

Q. Are you acquainted with Ted Wood of the Pantry Markets?

A. Yes.

Q. Do you know he used to work for Alpha Beta?

A. Very much so, yes.

Q. When did he leave Alpha Beta?

A. Just before he started his operation. I think it's about ten years or eleven at the most.

Q. Or maybe nine?

A. Or nine. It is between—I think it is about ten years.

Q. And he started with one store up there in Altadena, didn't he?

[fol. 677] A. No.

Q. Or was it Pasadena?

A. South Marengo in Pasadena.

Q. And Ted Wood has been able to grow and expand, has he not?

A. That's right.

Q. How many stores are in his chain now?

A. I think there is ten or eleven. They have a new one coming in Long Beach. I am not too sure, but it is in that area.

Q. You mentioned Cracker Barrel as coming into the Pasadena area.

A. That's right.

Q. Is that a large chain?

A. No, it's a small chain.

Q. Two or three stores?

A. That's right.

Q. Where are they going to build in Pasadena?

A. On North Lake—on Mountain and North Lake.

Q. Farther west on Colorado we have just had opened a large new El Rancho, have we not, in Pasadena?

A. That's right.

Q. Are you acquainted with Bud Godfrey?

A. I know who he is. I don't know him personally but I know of him.

[fol. 678] Q. That El Rancho is now a three-store chain, is it?

A. That's right.

Q. Yet they see some opportunity there and are building a store?

A. That's right.

Q. And the same with Cracker Barrel?

A. Yes.

Q. You say you are acquainted with the Von's and how they got started. You know that they started out in the depression just as you did with a one-store operation, don't you, Mr. Gertmenian?

A. That's right.

Q. And that by March of 1960 they had built themselves into a 28-store chain; isn't that right?

A. That's about right, yes.

Q. They have been a successful family operation largely, haven't they?

A. Well, yes, until a couple of three years ago when they put their stock on the market, or a certain percentage of it. I don't know what.

Q. You are acquainted with Rube Hayden who started Shopping Bag, aren't you?

A. That's right.

Q. You know he started out in the depression just as you did and got one store and through his hard work was able [fol. 679] to build it up into a 38 store chain, don't you?

A. Yes.

Q. And that was largely a family operation, too, wasn't it?

A. More or less. Not exactly, not as much as Von's was.

Q. And in this same period Market Basket started out

with one store in the depression and was able to build itself into what is now a 40 store chain, wasn't it?

A. That's right.

Q. You don't begrudge these people their success, I take it.

A. No, I don't, not especially, no.

Q. You are acquainted with Joe Hughes, aren't you?

A. Yes.

Q. And he was with Thriftmart, wasn't he?

A. Yes. He was a vice president.

Q. He left them in 1952, I think, didn't he, to start his own grocery store?

A. I thought it was '51. In that area, yes.

Q. And he has been able to build a successful chain?

A. Small chain, yes.

Q. How large would you say it is?

A. I think they have ten or twelve now. I don't know for sure.

[fol. 680] Q. Have you read reports in any of these trade papers you read about them having total sales of about \$48,000,000?

A. Hughes?

Q. Yes.

A. That particular one I haven't read, no.

Q. He has been a very successful operator?

A. Yes. He has good sized stores.

Q. Have you been acquainted at all with Joe Goodnight, who left Alpha Beta just three or four years ago?

A. No, I am not.

Q. You are not familiar with the Michael's Markets in Orange County?

A. No.

Q. Are you acquainted with Charley Futterman of Shoppers Markets?

A. Yes. You know, from an around about way, I mean.

Q. You know they have been able to grow and expand and be successful?

A. Yes.

Q. You have seen others like the Boy's?

A. That's right.

Q. When you started in business in 1933—Am I right?

A. No. I started in '27.

Q. Around 1930-'33 Safeway was put together. Do you recall that?

[fol. 681] A. Yes. It used to be the Sam Shilling Store, or something or other, and they bought them out.

Q. Sam Selig, S-e-l-i-g?

A. That's right.

Q. And Safeway had a large share of the grocery market in this area, did it not?

A. I would say so, yes. I don't think they operated under the Safeway name, though. It was something else. I don't know what it was.

Q. Some of it was Safeway and some Pay And Take It?

A. Something in that order. It's 30 years back. I don't recall, but it was something else.

Q. In your experience in this area have you seen the market share of Safeway steadily decline?

A. Well, they were still the tops until I presume when you people, Von's and Shopping Bag, came in. I think they still held the lion's share of the food business in this area.

Q. As far as you know, of your own knowledge they have the lion's share today, do they not?

A. Not in this particular area. I think maybe Von's are doing maybe more. I don't know.

Q. You don't know?

A. But they should be, I mean.

Q. Do you have any idea of what the market share of Safeway is now compared to what it was ten years ago?

[fol. 682] A. I wouldn't know offhand, but it could be eight-ten per cent more, fifteen per cent more.

Q. Market share or gross sales?

A. Well, gross sales I am talking about. It could be much more. I don't know. I mean I don't know the percentage.

Q. You don't know whether Safeway's market share, as distinguished from gross sales, has increased or decreased in the last ten years?

A. I would say they have increased.

Q. You would?

A. Yes.

Q. That is based on your study of the industry?

A. More or less, yes.

Q. What would you say about the market share of Ralphs compared to what it was ten years ago?

A. They have increased.

Q. They have increased their market share?

A. Definitely.

Q. What would you say about the market share of Thriftmart now as compared to what it was ten years ago?

A. They increased an awful lot because they opened many more large stores and closed all their smaller ones in most cases.

Q. Mr. Gertmenian, I am going to ask you to look at a [fol. 683] document which has been marked Fairbank No. 1 for identification. I will ask you to tell me what that chart shows as to what happened to the market share of the top three. Look at the bottom of the chart for that, between the line which is marked 1952 and the end of that line where the words "top three" appear.

A. 1961—'53 to '61; is that what you mean?

Q. The line ends prior to the number 1961.

A. Yes.

Q. What has happened to the market share of the top three in that period of time from 1952 to the end of that period?

A. They all had increases, if that is what you meant. Maybe I am not understanding what you are driving at, to be frank with you.

Q. Would you agree with me, Mr. Gertmenian, that—

A. When you say "Top twenty," you mean the largest markets, or top 15?

Q. Yes. The top 20 concerns, the top 15 concerns, the top nine concerns, the top eight concerns, the top five concerns, the top four concerns and the top three concerns.

A. Yes.

Q. What does this chart indicate was the market share of the top three in the year which is marked under the line 1952? It was roughly about 24 per cent, wasn't it?

[fol. 684] A. It looks that way there, yes.

Q. What does it appear to be at the end of that line?

A. That is the end of the line. They are way down.

Q. What about the market share of the top four in the same period?

A. They were up there. This includes '60; right?

Q. Actually this chart goes up to the middle of 1960 and

I will agree with you that it is a confusing chart, Mr. Gertmenian. Let us assume this is the market share of the top four in 1952. That would be roughly twenty-seven and a half per cent, wouldn't it?

A. Yes, according to this.

Q. And at the end of the time, which we will assume is the middle of 1960, what is the market share of the top four?

A. About 25, according to that, if that is the line.

Q. Yes.

A. Yes.

Q. Let us assume that the chart shows the market share of the top five in 1952 was roughly 31 or 32 per cent. What has happened to their market share?

A. They are down there too, 28 per cent. But the only thing that in 1960 we had that strike there. I don't know if that had some effect on that or not. Do you think?

Q. The strike was in 1959, wasn't it, Mr. Gertmenian?

[fol. 685] A. No, it was the end of '59—

Q. Wasn't it January of 1959?

A. January of 1960.

Q. Wasn't it January of '59? I think you are wrong.

A. Let's see. We have a five year contract with the union.

Q. That strike occurred, did it not, Mr. Gertmenian, a little bit more than a year before you bought your store in Alhambra?

A. That's right. That was '59, that's right. I mean that is when they hit the lower and then they start picking up. Actually this doesn't show much of '60 or '61 on the chart here.

Q. No.

A. But actually between that point and '62 and '63 I think the chains have gone much further than that.

Q. What statistics have you seen or what studies have you made which would lead to that conclusion?

A. I would read every year the volumes different stores are doing. And it usually comes out in the newspapers or some of the trade magazines or something. It shows how much more each one of these companies have done.

And I know this much, that the Von's average better in each store than some of the other chains do, in fact most of the other ones do. In fact each one. I know Thriftmart

[fol. 686] has gone way up as far as percentage goes. In most cases the profits are less, but in some cases like in Von's case they have made more money, more percentage-wise than others.

If those are the things you want me to tell you, I know those. I mean I do watch them.

Q. The gross sales of your Pasadena store have gone up, have they not?

A. Yes.

Q. But it is possible that your so-called share of total sales of grocery and related products could have gone down; isn't that right?

A. Yes. Now, let em—Explain that to me.

Q. When we are talking about market share we are talking about the percentage that a particular company has of total sales of groceries and related products in the Los Angeles metropolitan area, which includes Los Angeles and Orange County. So it is possible if there were greater sales in all, the fact that a company's own sales may have gone up—

A. That's right.

Q. —doesn't mean its market share has increased, does it?

A. No. But in my business it could be an exception. In general the majority of the independents are not doing as well and more of them going out of business.

[fol. 687] Q. You have mentioned in the Pasadena area, which you are most familiar with, a Safeway Store has gone out of business.

A. But they opened up larger ones, though. In other words, they would close in our particular area—in our particular area there was one on Allen and one on Foothill and they closed them up but they opened up on Villa and Lake there a store that perhaps was larger than all three of them put together. They had one on North Allen and they closed that but they built larger stores. That is what is happening today.

Your larger stores take so much more business, they can do so much more, and they do. These big stores, when they do come in, they create a panic. I don't know what Safeway and Von's are going to do when they come in not too far away from me. I will be frank with you, they are going to

hit Crawford's, they are going to hit Market Basket. What I am driving at is that these people are not doing a tremendous business there now, they are barely getting by and when they come in—I don't know what bearing it has on this hearing.

Q. Yet Cracker Barrel is going in and it is a very small chain, two or three stores, isn't it?

A. That's right.

Q. And El Rancho has built a new store in the Pasadena [fol. 688] area. That was only a two-store chain before that, wasn't it?

A. That's right.

(A short recess was taken.)

Mr. Alsup: Q. Mr. Gertmenian, this merger of Von's and Shopping Bag occurred in March of 1960. Have you seen any lessening in the vigor of competition generally in the Los Angeles area since that merger?

A. Well, if I tell you otherwise, the fact is there is more competition now than ever, as far as that goes. But the thing that I have to a certain extent, if you follow The Key Book, or any others, you would see that the chains are frankly—I don't know if I can say 90 per cent or 95 per cent or 99 per cent of the prices are the same. Except when it comes to butchering each other on their ads.

Q. But you say competition is more vigorous now than it was back in 1960?

A. Yes. There are too many markets and there isn't enough business to be divided and they are all trying to take more and more of it.

Q. Can you think of any area in the Los Angeles metropolitan area, that is Los Angeles County and Orange County, where a housewife doesn't have a pretty wide choice of a lot of different competing grocery stores to shop at?

A. I will let you take Covina, for instance, West Covina, around that area. It is practically all chains. And their [fol. 689] prices are all practically the same, except like I said in the case of advertising. I mean somehow or other if you are selling sugar, Von's-Shopping Bag is selling sugar for fifty-five cents, you can go to nine of the other stores in that area and that sugar will be fifty-five cents, or butter

will be seventy-three or seventy-five, whatever it might be. And I would consider that more or less some sort of monopoly on prices. And it never used to be that way. I mean in the past when you had a lot of independents——

Q. Do you feel that is an unreasonably high price?

A. It is not a matter of reasonable or unreasonable. But we are talking about setting prices up. Right now that is what I had in mind especially. If I am answering your question right. I mean they do have all these stores and yet they have to pay the same price in each of them, practically the same price.

Q. If Von's announces a price at that market, or Safeway does, or Ralphs does, and they are in your area, you try and meet it, don't you?

A. Well, yes. But suppose those prices may be too high or they may be too low at the same time. But in most cases they are marked at a price where there is usually a good margin. In other words, above the margin that you ordinarily make, let's say, if you were selling just that and no advertised merchandise. You will have maybe a 28, 29 [fol. 690] or 30 per cent mark-up, which is too high. Yet they turn around and especially started with the chain stores, they sell pot roast for sixty-nine cents, and then advertise it for thirty-three. And that is what I am driving at. But everybody else gets sixty-six when they are selling at, let's say, standard price, or maybe the same way on coffee, sugar and a dozen things. And yet when it comes to cutting prices they really cut. I don't know if you would call it if a customer has a better chance to buy one place or another, or to shop. That is the only time they have it.

Q. You referred to the West Covina area. I think earlier you said there are about six or seven discount houses operating in that area, aren't there?

A. That's right.

Q. That has all occurred since 1960, hasn't it?

A. That's right. And those people are, like I say—I mean you take any newer area you are not going to find any small stores because they don't have a chance to get into these places. They haven't got a chance to bid on a lease.

Q. You mean in a shopping center?

A. Any shopping center or any new area. West Covina is more or less a virgin area, you might say. They haven't

been there too long. Or their increase in population has been the last ten years. But if you come into Pasadena we still have a few independents that are struggling along. [fol. 691] But you go into these new areas and you don't find them in the first place.

And really, as far as the housewife goes, she has no way of trading with anybody but a chain store. You go into the San Fernando Valley and Canoga Park and different places, and that is what you find.

Q. Let us take the area you are more familiar with, Mr. Gertmenian. Didn't Bud Godfrey open up his El Rancho Market up there in Arcadia in a shopping center after you had got your Pasadena store that had been a former Market Basket Store?

A. Yes. But they are just going in to a larger area. Those markets were too small for them.

Q. That El Rancho was Bud Godfrey's only store, wasn't it?

A. That's right.

Q. And then Bud Godfrey built a second store, didn't he, down on Huntington Drive near Fair Oaks?

A. That's right. He didn't build one, he bought. There was a market there. It was a Big "B", B & B Market there.

Q. And he enlarged it and he has a very attractive and very prosperous store there, hasn't he?

A. Yes.

Q. And the same Bud Godfrey just this last year has [fol. 692] built a new and beautiful market down on West Colorado Street in Pasadena, hasn't he?

A. Correct.

Q. And the same thing is true of this Cracker Barrel outfit that you mentioned, isn't it?

A. That's right.

Q. In your experience in the grocery business, Mr. Gertmenian, you have seen other people start out like Hughes that you mentioned, and Ted Wood of Pantry Markets and many others, haven't you?

A. Well, some of them, like you take Pantry Market. You may say that some of these people were forced into business, from like Meadow Gold Dairies and others when they lost their dairy product business with Shopping Bag or Market Basket and so forth. They had the milk in produc-

tion and the money. They had to back up somebody to go into it. And I don't think I have to explain it to you. I think that is a fact that the reason Pantry is in business today is the fact that they are backed by the Beatrice Creamery Company and also Mr. Lewis of the Orange Empire. Because they want that business and they lost the creamery business to all the chains. That was one of the reasons that these stores are really opened up in town.

Q. And you are a member of Orange Empire, aren't you?

A. That's right.

[fol. 693] Q. Have they offered you any financial assistance?

A. No. I haven't asked for it. But I know that they have done that with others. I think you know what I mean, especially in the San Fernando area—I mean the San Bernardino area, Stater Bros. in some way or another have received help from the Lewis Company. He is a private person as well as being the association we belong to.

Q. In the same period have you seen liquor stores opening up and carrying more and more groceries?

A. Not that I know of, because most of the liquor licenses are bought by the chains there. A person has an awful hard time to get one.

Q. You know there are a lot of liquor stores even in the Pasadena area, don't you?

A. Yes. But they are old-timers that have been there. You don't see very many new ones open. I know one that in the last ten years has opened there.

Q. Have you seen in liquor stores that they have larger and larger grocery departments, bread and milk and delicatessen items?

A. I don't think—I have seen them but I don't think that they amount to very much. There is a couple—What there is in our area doesn't amount to anything.

Q. You have seen drugstores taking on various items sold by grocers and grocers are taking on various things [fol. 694] sold mostly by druggists; isn't that right?

A. Sure enough.

Q. It is a constantly changing business.

A. That's right.

Q. Where do you buy your milk, Mr. Gertmenian?

A. We get ours from Challenge Creamery.

Q. And you haven't received any financial assistance from them?

A. I have.

Q. You have?

A. Yes. They have a mortgage on my property in Alhambra.

Q. The price at which you sell that Challenge milk is fixed by State law, isn't it, Mr. Gertmenian?

A. That's right.

Q. And the price at which Von's must sell its Jerseymaid milk is fixed by State law, is it not?

A. Yes. The only difference is that whatever profit Jerseymaid makes they have an interest in there. Von's has an interest in it and the other markets, half a dozen others.

Q. But if Von's had taken that same amount of money and invested it in the stock of Challenge or in real estate, or in something else, it might have made just as much profit; isn't that right?

[fol. 695] A. Except that I pay interest for my money, that is borrowed money. Like I would from a bank or otherwise, and they don't have to pay interest in that deal.

Q. But if Von's borrowed money to make its investment in Jerseymaid it would have to pay interest on it just like you, wouldn't it?

A. It just depends the way you look at it.

Q. You state in Paragraph 12 that you face vigorous competition from Von's. What Von's Store do you have reference to there?

A. We have the one right closest right now.

Q. The one on West Main Street in Alhambra?

A. That's right.

Q. I think you testified that competition in that area has increased since 1960.

A. That's right.

Q. You refer in Paragraph 13 to the fact that there has been other acquisitions and consolidations since 1948. Which ones did you have in mind?

A. Well, there was Thriftmart. For instance, originally when Mr. Laverty came in this part of the country he was an ex-vice president of A & P Stores. He bought Fitzsimmons Stores, or bought most of the stock and later on Robert's Markets were added on, then Young's Market and

company. And then, of course, the name was changed to [fol. 696] Thriftimart from Fitzsimmons. And they also, I don't have to tell you, I guess it's a known fact, that they have gone into Smart & Final-Iris Company. I don't know what per cent of it they own or how it is tied up. But I know that they are involved in it.

And then you take Alpha Beta, for instance, Hiram's Ranch Markets and others they bought gradually.

Q. Are you referring to Alpha Beta buying Hiram's?

A. Yes.

Q. Are you thinking of Raisin's?

A. Raisin's Markets. I am sorry.

What paragraph was it? I don't even recall. There may be others, naturally.

Q. Paragraph 13. Were you thinking of Mayfair?

A. Well, of course, Mayfair, again, is one of the Arden babies. When all these chains got into the other dairy deal they all more or less got into the grocery business and became competition.

Q. When you said when Mr. Laverty came out from the East he bought the Fitzsimmons Stores——

A. That's right.

Q. And Mr. Fitzsimmons had been a prior vice president of A & P, had he not?

A. That's right. He passed away.

Q. He came out here for reasons of his health and got a [fol. 697] little better and built up a chain of about 18 small stores, didn't he?

A. I don't think there were that many at the time that he passed away.

Q. And then he died.

A. That's right.

Q. And then Mr. Laverty purchased these stores; right?

A. Right.

Q. He left A & P to come out and go into business here.

A. That's right.

Q. You say he acquired the Robert's Markets. Isn't it a fact, from your study of the industry, Mr. Gertmenian, that most of the Robert's Markets were very tiny, little stores?

A. They might have been, but Young's Markets and Company weren't small.

Q. I want to ask you about Robert's and then we will get to Young's. They were a small market?

A. Yes, they were small but they did a pretty good volume of business. They were not up to date markets. They, you might say, catered to cheaper grades of merchandise and they didn't have fancy buildings or check stands or gondolas or anything else. But they did a tremendous volume of business. Like the one they had in Eagle Rock and other places on the highways and so forth.

[fol. 698] Q. Did you know Mr. Laverty, Sr.?

A. Yes.

Q. Do you know whether or not it has been his policy when an employee wants to go into business for himself and when he gets older, to let him take over one of the Thriftmart Stores, whether it be a former Robert's Store or some other store, and operate it on his own?

A. Ordinarily they don't give one of their good stores. If there were times that they were either ready to get out of one then they might turn it over to some of the boys.

Q. You know that has happened on quite a few occasions; isn't that right?

A. Yes.

Q. You mentioned Young's Market Company. Is that a retail grocery company?

A. They were retail. They were the Thriftmart originally. And then it opened as Thriftmart and then they had the store in Pasadena. And, if you recall, they were where Hines is now.

Q. This Hines Store in Pasadena, do you compete with that?

A. No. They are not especially competition because their business is all credit and it's a little different than my operation.

Q. They run a very successful operation, don't they?

[fol. 699] A. That's right.

Q. And that was a former Thriftmart Store that they took over and have run very successfully?

A. Yes. Thriftmart pulled out of that area and they took it back. They used to be within a block of that one time themselves and they were out of business for a while and they came back again.

Q. Do you know from your study of the industry, Mr.

Gertmenian, how many separate grocery concerns do business in Los Angeles and Orange Counties?

A. I don't know the exact number.

Q. Would you say several thousand?

A. Well, it all depends when you say "several thousand."

How many thousand? One, two, three?

Q. Would you say four thousand?

A. In Los Angeles and Orange Counties?

Q. Yes.

A. I have to make a wild guess if I do. I would say maybe 1500 or something.

Q. Separate grocery concerns?

A. Possible. I am not sure.

Q. That is based on your continued study of the industry?

A. I am just guessing at this.

Q. You list the companies that you consider the major [fol. 700] companies in Paragraph 10 of your statement. Did you want to look at that?

A. Yes.

Q. You list Von's and Shopping Bag, Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant as being among the leading firms in the area.

A. Yes.

Q. Are those the same firms that you refer to as the major firms in Paragraph 14?

A. Yes, I would say so.

Q. Do you have any knowledge whatsoever that Von's intends to merge in the future with any other company?

A. Do I have any knowledge that they are going to?

Q. That they have any intention of doing so.

A. Well, all I can say is what is going to stop them? If they merge with Shopping Bag what is going to stop them merging with somebody else? I mean from what I have seen in the past.

Q. I ask you, do you have any knowledge whatsoever that Von's has any intention of merging with one of these other companies?

A. No, I do not. But I would like to give an opinion.

In the case of Fox Market, for instance, many of these chains are built up and when they get big enough they have [fol. 701] the hope, this is always a rumor in the business, that they are building up so that some big outfit from the

East, Chicago or New York, or one of those big areas, will come and buy the chain. And they do not want to buy small chains. When they do come they want to buy a big one, 80, a hundred or more.

I mean that was one of the things that Mr. Fox had. I mean that was the general rumor among the business that he is building these up, he is going to dump it on somebody from back East.

Q. Did Fox build it very rapidly and over expand it?

A. That's right.

Q. And he went into bankruptcy. When conditions changed a little bit he couldn't hold on. And the sixth largest chain in the nation, Food Fair, came in and picked up what was left of the Fox chain in bankruptcy, some 18 stores; isn't that right?

A. That's right.

Q. I ask you, Mr. Gertmenian, if you have any knowledge whatsoever which would lead you to conclude that Ralphs intends to engage in any merger in the future?

A. I do not.

Q. How about Safeway?

A. Safeway, who are they going to merge with? They don't merge, in fact. Not anything that I know of. Not in [fol. 702] this area. They haven't bought or sold any of their stores. If they close up they don't sell their stores. They leave it stay empty. The first of last year there were several of them they closed. They will not sell it to anybody.

Q. This statement in Paragraph 14, Mr. Gertmenian, if this merger is permitted there will probably be subsequent mergers between and involving the other major chains, which are the chains you have identified in Paragraph 10. That is just speculation on your part, isn't it?

A. That's right. All of these things could be speculation and yet they turn to be facts in time, though. If you had asked me the same question ten years ago if Shopping Bag and Von's are going to incorporate at any time, or merge, what answer could I have given to you? If I said, yes, they are going to, you would laugh at me and yet ten years later they have merged. Or in the case of a few others, like Thriftmart, like I mentioned the fact about the Fitzsimmons Stores getting to be Thriftmart and some of the

others. In other words, you can't tell me that they are not and I can't tell you that they are. But they have.

Q. We would both be speculating, wouldn't we?

A. That's right. But they have done it. And what is going to stop them to be even bigger than Safeway? They [fol. 703] already are maybe, or even be bigger than Ralphs and a few others put together.

Q. You know that Von's and Shopping Bag, now Von's, operates only in Southern California, don't you?

A. That's right.

Q. You know that there are some large national chains now doing business in this area, don't you, such as A & P?

A. That's right.

Q. Safeway?

A. That's right.

Q. Acme?

A. American Stores, yes.

Q. Food Fair?

A. That's right.

Q. And there are some large chains in this area which do business in other states than California, aren't there?

A. That's right.

Q. And there are a lot of smaller chains like Shoppers and Hughes and Pantry, aren't there?

A. There are.

Q. And there are a lot of two and three store chains, aren't there?

A. There are.

Q. And there are thousands of single store operators, aren't there?

[fol. 704] A. Getting less every day.

Q. Prior to the merger of Von's and Shopping Bag, Mr. Gertmenian, you state in the statement that you had studied their operations. Wasn't it true that Shopping Bag operated stores primarily in the East area—

A. That's right.

Q. —and in the North?

A. That's right.

Q. And Von's operated primarily in the West and South?

A. West Los Angeles, that's right.

Q. They had very few, if any stores, which served the same trading areas; isn't that right?

A. Until toward the end there, and then they were getting closer and closer.

Q. Can you think of any of the chains which you have listed in Paragraph 10 which do not have a great number of stores close to one another? Aren't there a lot of Thriftmart Stores by Ralphs, They are pretty well spread out throughout the area, aren't they?

A. That's right.

Q. And so is Ralphs?

A. That's right.

Q. That is true of Market Basket, isn't it?

A. Well, you take Thriftmart. Now, they are not in this area hardly at all. They are not in the Pasadena area, they [fol. 705] are not in the Sierra Madre or Alhambra or Eagle Rock area, or in this area at all. And you take your Food Giants are not in this area.

I mean it makes it logical for them to naturally, if they are going to get together, to get together with someone that is not as close.

Q. But there are other areas where they are close, isn't there?

A. That's right. What is going to stop them? I mean like them to come into the Pasadena area and, say, Food Giant, they take over Pantry which hasn't got a store around their area, or any one of them, Thriftmart or anyone.

Q. And here you are just speculating again, aren't you?

A. Well, sure, it's all in speculation.

Q. As far as you know they have no intention of doing it.

A. Well, I don't know, no. But there is always, as long as there is markets and people, they can get together on those things.

Q. You would regard this as a mere possibility; isn't that right?

A. That's right.

Q. Based on your speculation.

A. You can call it a possibility or you can call it a fact from the past as to what has happened to some of the [fol. 706] others. With the exception of, perhaps Ralphs and a few, one or two others. They ordinarily don't go into buying anybody else or combining. Practically all of them, one way or another, you take Food Giant and Weinstein

Brothers and so forth, they sometimes or other, Panorama Markets and so forth, they have gotten together and sold and resold to each other. I mean those always have happened.

Very few of the chains have stayed quiet. In fact Von's and Shopping Bag were one of the ones that have stayed a long time, and then they saw it advantageous to get together. Combining their warehouses and this and that, and finding a location. What chance has a little guy like myself if I want to go into an area, like this particular area in Pasadena that is in the County but between Pasadena and San Marino there where they come in with all the opposition and everything else. I don't know how much they spent before they got that thing to go through. But I mean those are some of the things that when they get big that is what happens. It leaves us out.

Q. Yet you opened up after the merger of Von's and Shopping Bag, you acquired the store in Alhambra directly across the street from a large Safeway Store and not far from a new and large Ralphs Store and with Crawford not far away, and other competitors in the area and you expect to do well.

[fol. 707] A. I spect to do a little business, yes. We don't have to do so much business as the big stores are doing, in our particular case. Where Safeway has a million dollars involved I have only \$150,000 invested in mine. And I don't have to do the kind of business they do to get by. And we don't expect to do big business in our areas. If we do a million or seven or eight hundred thousand we get by fine. But we don't expect to build markets like Von's and Shopping Bag does and expect to do that type of business with our operation.

Q. You had the same opportunity back in 1930 that Ted Von Der Ahe did, didn't you?

A. Well, I don't know if—as far as that goes, so has a million others. You could have been United States District Attorney. I mean that has no bearing at all.

Q. It has no bearing at all to you?

A. No, I don't think so.

Mr. Alsop: I have no further questions.

Mr. Hughes: I would like to have identified for the record

as Gertmenian No. 1 the statement entitled "Testimony of Manuel Gertmenian."

(The document referred to was marked by the notary public as Gertmenian Exhibit No. 1 for identification, a carbon copy of which is attached in lieu of the original.)

[fol. 708] Cross-examination.

By Mr. Hughes:

Q. Mr. Gertmenian, Mr. Alsup was referring to Mr. Laverty giving away certain stores to his ex-employees.

A. He doesn't give them away, no.

Mr. Alsup: Did I say "give"?

The witness: He turns it over to them. They still carry the accounts and carry the books and everything else in their office and they charge a service for them. They figure they make more money by doing it. It is usually stores that are losing money. This is off the record.

Mr. Alsup: If that is going to be on the record we are going to have a lot of questions.

I would like to know the basis of your knowledge for that?

The witness: You brought the question for that. I know several of them. Like I say, I was with Fitzsimmons very closely working from 1933 to 1942, some nine or ten years we were in business together. You might say they were my tenants. But that is the way it used to be.

Usually whenever they had a small store a couple of their fellow men took it over and Mr. Laverty's office kept—the Fitzsimmons Stores kept all the records and charged them for the services, the accounting and this and that and the other.

[fol. 709] Mr. Hughes: Q. Would you care to elaborate further on that?

A. I don't see—Would this have any effect on this particular hearing in one way or another?

Q. Yes, sir.

A. I mean he brought the question, I didn't.

Q. Would you continue elaborating on that, the operation of ex-Fitzsimmons Stores?

A. Well if it would do any damage to Mr. Laverty in any

way I would not. He is a personal friend of mine. I think I would like to leave it alone.

Q. You referred to your Pasadena store back in 1947 and you stated that you had to get out of there because you were overbid by Fitzsimmons.

A. That was our store not in Pasadena but in Monrovia. I had a ten year lease on the property on South Myrtle there and when our time came for renewal of the lease there, at that time Fitzsimmons stores were going into the produce and meat end of the business as well as the grocery. That was the first time. In the past I used to lease their produce departments out and meat departments out. They only operated the grocery department. And that was about the time they had started.

And they overbid my particular lease at that time and we had to leave. That was one of the things which Mr. [fol. 710] Hughes was the gentleman that did it, and we had a gentleman's agreement, mouth to mouth, that we would stay as a produce man when they did take the lease. But after they took the lease they gave us a notice to get out.

Q. Was that a profitable operation at that time?

A. Very much so.

Q. You didn't want to lose that lease?

A. That's right. The building was built for me over there.

Q. Do you know of any other instances where—

A. I have an instance for this particular Von's.

For instance we advertise in a little, small paper in Alhambra there where I always had the first page ever since that paper started. And since Von's came I have never been able to stay on the first page any more. When you turn to the first page Von's ad is always there. And I fought with the deal and everything else. I haven't been able to get to first base with it. I mean if that means anything, again you can put it any way you want.

Q. What is the name of that newspaper?

A. Alhambra Free Press.

Q. Is that a large newspaper?

A. It is a small newspaper.

Q. Do you know its circulation?

A. Well, it is supposed to be 30,000 in the area and about

[fol. 711] another 20,000 on the outside area. Around 50,000. It's a weekly, it is not a daily paper.

Q. Do you know if you were overbid for that advertising page?

A. I don't think so. I think they have a standard price for that advertisement.

Q. How often did you run your ad on this page?

A. Every week.

Q. How often do they run one?

A. They run the same now.

Another instance I would like to mention what makes it awful hard for a small merchant to express himself to the public, is that nearly two months ago I think it was where Von's started listing items that they were selling them for and the other stores were selling for. One particular item was corn beef at fifty-nine cents and everybody else was supposed to get sixty-three. We were selling it for fifty-nine all the time. Now, how can I fight a deal like that. They are big enough, they are in two or three of the metropolitan area papers and practically every small paper in the area and they come out and you haven't got a chance to fight those things back. I mean that is your big operation again. It makes it pretty rough and all that.

Another thing, as long as we are on this particular object, when they have their grand opening there, where they had [fol. 712] items advertised in the metropolitan area papers and everything else, and yet when you went into Von's on Main Street there, their new store they had many, many items way low, especially in the produce. That has been my, you might say, pet subject in the business. They had advertised onions and radishes three for a dime and they had it for two cents apiece over there. They had artichokes cheaper over there. They had right up and down the line everything that was cheaper than in any of the other stores that you could buy.

And just like this right now, they are doing on South Pasadena where they are new there, they are giving away fifty cents worth of merchandise, or "this coupon good for fifty cents." They don't do it in any other store but they do it in that one. I know it is not legal, they are not supposed to do it. The little guy is too small to fight and the

big guys are just as guilty themselves. Most of the time they don't like to be bothered to be involved in those things.

We had Safeway across the street there advertise eggs at thirty-five cents with a little circle there when this new store opened, cut rate store opened in Alhambra for thirty-five cents, when they had it in the newspapers for forty-nine cents.

Q. What little cut rate store is that that you just re-[fol. 713] ferred to?

A. Not a little cut rate store. The one we were talking about in Alhambra, that large cut rate store.

Mr. Alsop: You mean the Unimart Discount Store?

The witness: The Unimart Store, yes.

Mr. Hughes: Q. Mr. Gertmenian, on your examination by Mr. Alsop you were speaking of the draw area of your Pasadena store and you mentioned it extended to Orange Grove on one side and Sierra Madre on another?

A. Yes.

Q. How wide a radius is that draw area?

A. I would say it's about a mile, a little bit closer. Not as much on the south. California is not a mile away from there.

Q. In your examination by Mr. Alsop you also made reference to expanding areas in Orange County. You were stating that the stores were being built faster than the population was growing. Do you recall that?

A. Yes, I do. I didn't say—Did I say Orange County?

Q. I believe he was questioning you on Orange County at the time.

A. That's right.

Q. Are these stores that are going in usually chains or independents?

Mr. Alsop: I object to that on the ground that no founda-[fol. 714] tion has been laid.

Mr. Hughes: Q. You can answer the question.

A. Answer the question?

Q. Yes.

A. What am I supposed to do when he objects?

Q. Just answer the question here.

A. Well, it's a known fact that these chains will go into

an area with the idea that they are in time going to develop. An independent can't afford to go into an area and expect to wait two, three, four or five years.

We see that right on the foothills. If you start from Pasadena, Arcadia, Monrvia, and keep going there, chain after chain, chain after chain. There is Market Baskets that don't do very much business, there is Shopping Bags that don't do as much business as they would like to because of the fact that continuously somebody else keeps coming in those area. But the idea that in eight or ten years the population is going to double up in those areas. And we have those problems all over the country. In the Phoenix area, this is out of the area again, but it is the same thing. They have enough markets there to supply a million people.

Mr. Alsup: You are talking about Phoenix, Arizona?

The witness: Yes. You can take it out if you want.

Mr. Coyle: We will take it out eventually.

The witness: But I mean these markets are being built [fol. 715] in many of these areas where they have to wait a long time before they develop.

Mr. Hughes: Q. Do they make money in the meantime?

Mr. Alsup: I will object on the ground that no foundation has been laid.

Mr. Hughes: Q. Would you answer the question?

A. In some cases they do and in most cases they don't. That is a known fact in the trade.

Q. Would you open in an undeveloped area?

A. I couldn't afford to open in an undeveloped area.

Q. On your examination by Mr. Alsup, in referring to Paragraph 12 of the testimony of Manuel Gertmenian, you stated that you faced very vigorous competition from Von's. Specifically you said the Von's in your neighborhood. Do you believe you face vigorous competition from Von's as a chain?

A. At that particular store we do, yes, because they cut into our business quite a bit. And the fact that if it becomes necessary, like I say, I know that they are supposed to have the same prices in the chain stores, but in that particular store they do have a lot of prices that are much lower than other stores. Particularly right today, you can check a

couple of their stores and you will find that they have cheaper produce prices there than any of the others.

Q. Can you meet their produce prices and make a profit? [fol. 716] A. You can, yes. But that isn't the question.

Q. Mr. Gertmenian, I would like to have you take a look at these exhibits, which have previously been identified as Fairbank Exhibits 1 and 2 and Dick No. 2 through No. 7, and ask you if you have seen these exhibits before.

A. I think I have. I think you had a list of these that you showed me what was in the report or some things.

Q. Take a quick glance at them, Mr. Gertmenian.

A. Yes, I have.

Q. I just want to know if you recognize each of them. Not to study them carefully. But would you take a quick glance at the others, too?

A. All right.

Q. Just look through all of them. I ask you if you didn't see these when you talked with me last December.

A. Yes, you showed me some of these.

Q. Do you recognize Fairbank No. 1 as being referred to in Paragraph 8 of your statement?

A. Yes.

Q. And Dick Exhibit No. 2 referred to in Paragraph 3 of your statement?

A. Yes.

Mr. Hughes: I have no further questions.

[fol. 717] Redirect examination.

By Mr. Alsup:

Q. Mr. Gertmenian, do you have any personal knowledge of your own as to whether these exhibits that you have just examined are reliable and accurate?

A. They usually are. They are taken from figures or reports that people have to turn in from their corporation reports, and so on and so forth, and that is where these are taken from.

Q. That is the Board of Equalization figures?

A. Board of Equalization figures and also financial reports that the companies themselves put out as to their increase in volume and how much they did this year and the

year before. I mean they show them several times a year, or three or four times a year you will see them in the newspapers as to how their quarters were, how much they did last year and the year before.

Q. Do you have any knowledge what the Board of Equalization considers a grocery store to be?

A. What it considers to be a grocery store?

Q. Yes. In these statistics. Have you made any study? Do you have any knowledge at all what the Board of Equalization classifies as a grocery store?

A. I do not know. What else besides a grocery store?

Q. Do you know whether or not they consider a trailer which might have a beer and wine license and sell bread in [fol. 718] it as a grocery store?

A. I don't know.

Q. You have no knowledge?

A. No knowledge.

Q. You have no knowledge whether these figures are accurate, have you?

A. Well, we are talking about the grocery business. I presume that they are grocery businesses like mine, or in that area. In other words, I won't be thinking of restaurants or peddlers or something else. I am thinking of grocery stores as I operate, as most of my competitors operate.

Q. This Board of Equalization chart showing the decline in the number of single store operators that you have referred to, will you look at it?

A. I am looking at it.

Q. Do you know whether or not the Board of Equalization considers a produce stand as a grocery store?

A. I wouldn't know, sir.

Q. Or a drive-in milk depot?

A. I wouldn't know.

Q. Are there any drive-in milk depots that come into the Pasadena area?

A. Yes.

Q. Are they allowed to sell milk cheaper than you?  
[fol. 719] A. I think one cent a gallon, or something or other, or two cents on the gallon, I think.

Q. That is a new development since 1960, isn't it?

A. Yes.

Q. And they also sell potato chips and weiners?

A. And eggs.

Q. And ice cream?

A. That's right.

Q. And these are pretty important draw items for a grocery store, aren't they?

A. They are.

Q. This chart which shows a decline in the number of single store operators, Mr. Gertmenian, you were a single store operator until May of 1960, were you not?

A. For a period there, yes. But I did have more than one before.

Q. But as of April 1960 you were a single store operator; right?

A. That's right.

Q. And then you acquired a second store, did you not?

A. That's right.

Q. So that represented a decline in one of the single store operators, did it not, because you are now a chain?

A. It would seem so.

Q. That is a conclusion you would draw, wouldn't you? [fol. 720] That is a decline in the number of single store operators?

A. Providing I am considered a chain. I don't know. It all depends how you interpret it.

Q. You are no longer a single store operator, you are a two-store operator, aren't you?

A. Two-store operator.

Q. You referred to Fitzsimmons. Are you acquainted with the Dobson Markets out in Leimert Park?

A. No, I am not.

Q. You don't know if that was a former Fitzsimmons Store?

A. I am not sure, sir.

Q. Your knowledge of the Fitzsimmons-Thriftmart operations, I think you said it dated from 1933 to 1942; is that right?

A. That's right.

Q. What other grocery concerns advertise in this Alhambra Free Press? Does Safeway?

A. No. Safeway does off and on. But the Boy's Market

do. And they have the center page and you can't get that away from them.

Q. How about Ralphs?

A. Ralphs is not in that particular one.

Q. How about Crawford's?

A. Crawford's does not.

[fol. 721] Q. What others do?

A. There is Safeway comes in, Boy's Market, myself, Carpenter comes in, and there is a couple of others in the Valley. I don't recall their names there.

Q. With respect to your Pasadena store what newspapers do you advertise in?

A. Star News.

Q. I have read it. Any others?

A. That's it. Star News and The Independent if they are running, which is one paper.

Q. You mentioned Shopping Bag going in the Foothill area.

A. That's right.

Q. How many Shopping Bag Stores are there out in that area?

A. I think there are four, if I am not mistaken.

Q. How old are they?

A. Oh, they started way back in, it could be '35—'34, '35, '36, in that area the original one. I couldn't tell you.

Q. How about the second one?

A. I don't know. They had the control of that area for several years. There was nobody else but themselves there, with the exception of a few other independents there.

Q. And then others moved in on them; isn't that right?

[fol. 722] A. Yes.

Q. Country Cousins?

A. Country Cousins, others. There is Ralphs moved in, Safeway moved in, Market Basket and Alexander's moved in.

Q. You say that most of the new openings in Orange County have been by chains. Do you include in that this Joe Goodnight of Michael's Markets?

A. I don't know if they consider them big enough or not.

Q. I think you said you weren't even familiar with Michael's Markets before.

A. The answer I give you was that I do not know if they are big enough or not.

Q. You really haven't made much of a study at all of Orange County, have you?

A. Well, you know what you hear through the trade there, what is going on and what is happening. And you take in Covina and other places where Crawford's tries and doesn't go over, McDaniel's tries and doesn't go over, somebody takes them and doesn't go over. The fact is that there are just too many of them around there. There isn't enough business to go around.

And that is the same thing, it's a growing area. Practically every one of those areas are down that way. They are overcrowded and naturally in time they figure there is [fol. 723] going to be enough business to take care of them.

Mr. Alsup: I have no further questions.

Mr. Hughes: I have no further questions.

Mr. Gertmenian, would you waive the signing of this deposition when it is typed up by the reporter?

The witness: Would I sign it?

Mr. Hughes: Would you waive signing it if it is agreeable to counsel for Von's and counsel for the government?

The witness: Yes.

Mr. Hughes: We are just asking if you will forego signing it, if we can get together and agree that it's correct.

The witness: Yes:

Mr. Hughes: Is it agreeable, Mr. Alsup?

Mr. Alsup: Yes. With the understanding that it will be filed as if it had been signed.

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[fol. 724] TESTIMONY OF EDWARD HASSON

If subpoenaed to testify, Edward Hasson would testify as follows:

1. He is the owner of A-1-Market, 900 South Figueroa Street, Los Angeles, Los Angeles County, California. He has been in the grocery business in Los Angeles for the past 17 years. In 1959 the A-1-Market had gross sales of approximately \$240,000.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Hasson closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the "Black Book", a booklet similar to the Key Services, and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin", "Super Market Merchandising", and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer

grocery stores are needed in the area to serve a comparable number of people.

[fol. 726] 6. The witness would testify that single store operators and small chains do not have their own highly developed distribution systems. However, many of the single store operators and small chains belong to a cooperative and have a good distribution system through the co-operatives. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major perishable products as fresh dairy, meat and produce items. He would testify that large chains, such as Von's and Shopping Bag, belong to co-operatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of the cooperative with direct purchasing and a highly developed distribution system. In addition, some of the chains, in-[fol. 727] cluding Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid. Other large chains in the area have their own dairies.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the picture presented in defendants' exhibits which show that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the

15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operation of Von's and Shopping Bag prior to the merger.

He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for new locations is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same line and the stores are known as "Von's-Shopping Bag."

12. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

[fol. 729] 13. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag or of any two grocery chains of such substantial size, would have the effect of

substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 730] TESTIMONY OF THOMAS P. HUBBARD

If subpoenaed to testify, Thomas P. Hubbard would testify as follows:

1. He was the owner of Hubbard's Market, 5321 South Vermont Avenue, Los Angeles County, Los Angeles, California. The meat department in his store was owned and operated by another party. He has been in the grocery business for most of his adult life and had operated Hubbard's Market for the past five years. The gross sales of Hubbard's Market in 1959 were about \$130,000, exclusive of the meat department.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Hubbard closely inspected all grocery advertising by the major chains as it appeared in the newspapers. He subscribed to the "Black Book," a booklet similar to the Key Services, and followed the prices of all the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly read, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the [fol. 731] witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-

known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

[fol. 732] 6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at their warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of Certified with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid,"

[fol. 733] which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.5 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a [fol. 734] history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's [fol. 735] and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocery. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 736] TESTIMONY OF RODERICK A. IRVINE

If subpoenaed to testify, Roderick A. Irvine would testify as follows:

1. He is the owner of two grocery supermarkets, both known as "Star Markets." One is located at 350 E. Garvey Avenue, Monterey Park, Los Angeles County, California, and the other at 2289 W. Main Street, Alhambra, Los Angeles County, California. Each of these stores gross approximately \$1. million a year. Mr. Irvine will testify that he recently had a third store, also known as a "Star Market," which was located in Temple City, Los Angeles County, California. However, the Temple City store did not show a profit and he closed it in May 1961. The sales of the Alhambra and Monterey Park stores are down from last year.

2. Mr. Irvine has worked in grocery stores for most of his life, and has had more than 30 years actual experience in the retail grocery business. While he was still in high school, he began working for McDaniel's Market and worked there for six years. At the time he left he was manager of the market. He spent the next fourteen years working for Crawford's Market and he eventually became general manager of Crawford's. He left Crawford's Market and went into business for himself and has remained in business for himself until the present time. Mr. Irvine is currently a [fol. 737] member of the City Council of Monterey Park and has been on that Council for many years.

3. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, he closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

4. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

5. He would testify that single store operators cannot get [fol. 738] into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction

to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

6. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result fewer grocery stores are needed in the area to serve a comparable number of people.

7. The witness would testify that single store operators and small chains, such as his, do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result they are able to buy in heavy volume directly from the [fol. 739] producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

8. He would also testify that he purchases from the Spartan Cooperative (which is owned by Certified) and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items, although delicatessen items are available from Spartan. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Thus they have combined the advantages of Certified with direct purchasing and a highly developed distribution system. In addition some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

9. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 [fol. 740] the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

10. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

11. He would state that Von's and Shoppig Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

[fol. 741] 12. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

13. He would testify that he is aware of the recent statement by Mr. Theodore A. Van der Ahe, the president of Von's, that the competition which Von's faces has not been

"cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

14. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

15. He would state that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout [fol. 742] the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag may have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 743] Deposition of **RODERICK A. IRVINE**, taken on behalf of defendants, at 433 South Spring Street, Los Angeles, California, commencing at 2:00 P.M., Monday, April 22, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.

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**RODERICK A. IRVINE**, having been first duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Alsup:

Q. Would you state your name and address, please.

A. Roderick A. Irvine, 612 Kingsford Street, Monterey Park.

Q. You are the mayor of Monterey Park, aren't you?

A. Not right now. Three or four times previously. I am just on the council now. We vacate it every year. We have had some dealings with O'Melveny & Myers on bond issues previously, always very good.

Q. Then I can't irritate a good client of the office. What is the address of your store, Mr. Irvine?

A. No. 1 store, 350 East Garvey, Monterey Park; No. 2 store, 2289 West Main Street, Alhambra.

Q. And they are known as Star Markets?

A. Yes, sir.

Q. We have been furnished with a document entitled [fol. 744] "Testimony of Roderick A. Irvine." Do you have a copy of that in front of you?

A. Yes, I do.

Q. You have read it over?

A. Yes, I have.

Q. Did you sign it?

A. Yes, I did.

Q. Paragraph 1 of that statement says that you recently had a third store known as Star Market which is located in Temple City, Los Angeles County, California. "However, the Temple City store did not show a profit and he closed it in May 1961." You actually sold that lease, did you not?

A. That is correct.

Q. To whom did you sell it?

A. A fellow named Page and two partners.

Q. A fellow named Wachman?

A. Something like that. They are partners.

Q. These were men who had previously worked for a chain store and were entering business for themselves?

A. I think they worked for a single store operator. I don't know whether they had chain experience previous to that or not.

Q. This represented a new entry of a single store retailer into the business; isn't that correct?

[fol. 745] A. Represented a take-over, yes.

Q. Turning to your 350 East Garvey, No. 1 store, that is in Monterey Park?

A. Yes, sir.

Q. What do you consider the draw area of that Garvey store?

A. Well, as you are probably well aware, the draw of any

market depends upon its size, the competitive factors involved and geographical location. And it decreases in an inverse ratio to the increase in distance, naturally. In other words, most of our draw area is immediately surrounding the store. We do draw some, strangely enough, we have a couple of customers in Montebello, a half a dozen from El Monte and so forth. But this, of course, is the minor part of the business.

Q. Where would you consider the great bulk of customers?

A. Within a mile radius, approximately a mile and a half.

Q. Within that mile radius of your No. 1 store on Garvey Boulevard what competitors do you have?

A. Let me clarify my previous statement. When I say "a mile," I am assuming that Valley Boulevard represents a mile. It may be a little more, it may be a little less. I am not sure. But within that rough competitive radius, call it what you will, we have Crawford's, Von's, in Monterey Park [fol. 746] we have Von's-Shopping Bag, call it what you will, Gateway, Alpha Beta on Atlantic. We also get some competition from Atlantic Square, which is another Von's and A & P location, which I am sure is further than the mile.

Q. That is the—

A. In Monterey in the Atlantic Square Shopping Center.

Q. That is quite a ways away, isn't it?

A. Yes. But we feel something.

Q. And there is a Von's Store in that shopping center?

A. Yes.

Q. And across the street there is an A & P?

A. Yes.

Q. And about a half a block there is a Safeway and Food Giant and some other stores; isn't that right?

A. Right.

Q. On Garvey Boulevard, where your store is located, there is a Gateway Market which is just two blocks west; isn't that correct?

A. Two of three, yes. There is also a Shoppers, another mile and a half east on Garvey that I had forgotten about.

Q. That Gateway, is that a newer store than yours.

A. It's a remodeled store. I used to be general manager

of Crawford's and we had that store. Just after I left Crawford's [fol. 747] was unable to complete a lease satisfactory to them so they moved out of the place and Gateway moved in with a complete remodeling of the building.

Q. Gateway is a relatively small chain, is it?

A. They are smaller than they were a couple of years ago, yes.

Q. Eight or ten stores?

A. I don't know how many they have now. I doubt they have that many any more.

Q. Going still further west beyond Gateway there is a Shopping Bag Store on—Is it Garvey Boulevard?

A. Garfield.

Q. Garfield Boulevard just off Garvey?

A. Yes.

Q. You mentioned the Shoppers about a mile and a half east on Garvey. Is there another little market called Grilli's Italian-American Market, quite close to yours, about two blocks east of yours?

A. There may be next to a little lunch counter. It is possible. There was, I am not sure that it is still there. They changed hands so many times. I think it is. Three blocks, I think it is.

Q. You mentioned the Crawford's Market over on Valley Boulevard. That is at Valley and New Street, isn't it?

A. That's right.

[fol. 748] Q. Someone going from the general vicinity of your store would have to go east to New and over New Street to reach that Crawford's?

A. Either that way or go straight up North Alhambra Avenue over the freeway and turn right into the shopping center there and reach Von's, and across the street is Crawford's.

Q. Along New Avenue between Garvey, where your store is located, and Valley Boulevard there are several small markets, are there not, June's Market?

A. There is one little one on the right going north, there is a place that sells bread and milk in a service station. I think that's all on there.

Q. Is this Crawford's Market there at New and Valley about a mile and a half to two miles away?

A. Something like that. I am not exactly sure.

Q. Has that been there quite a while?

A. Since 1937, I believe.

Q. Is that the Crawford's at which you worked?

A. Yes.

Q. There are another two Crawford Stores, aren't there?

A. Yes. There are two Crawford concerns. Mr. and Mrs. had a divorce and split up the company.

Q. Which Crawford's is this one?

[fol. 749] A. This is Crawford's Store, Inc. owned by Mrs. L. B. Crawford and Bill Crawford.

Q. You say that has been there since '37?

A. It opened in June of '37, I went to work for them October of '37, I think.

Q. Have you heard that they are planning to remodel and build a new store there?

A. I certainly have.

Q. What have you heard in that connection?

A. That they are going to open a rather large operation there with other shops, you know, in conjunction with them.

Q. That is a very large store right now but quite old?

A. Very old, yes. Pretty much chopped up. It is patched up and added onto.

Q. How large a chain is this Mrs. Crawford's chain, do you know?

A. Anaheim, Montebello, Glendale, No. 8 and No. 9, Pasadena—six. I think that that's all.

Q. Six stores?

A. Yes.

Q. And the other Crawford organization, that is W. H. Crawford, is it not?

A. That's right.

Q. And he has the Five Point Store in El Monte?

[fol. 750] A. Modern building, so-called, yes.

Q. And he has this Crawford's Modern Village down at Atlantic Boulevard?

A. I have forgotten the name now.

Q. Crawford's Modern Village, isn't it?

A. I don't think that is exactly it, but something like that anyway. It is basically a department store, it is not a food operation.

Q. It is on Atlantic Boulevard just off of Garvey?

A. Just south of Alpha Beta. It is not a food operation, however.

Q. He does have food in there?

A. Not retail food, no. Strictly ice cream or something like that.

Q. And then there is this Alpha Beta that you mentioned?

A. Acme, whatever you want to call it.

Q. Isn't there a Shaub's Market east of there, about three-quarters of a mile on Garvey?

A. Shaub's? No. Shaub used to be a partner with W. H. Crawford in what is now the Gateway location.

Q. There is no new Shaub's there just east of you?

A. No.

Q. Your store, Mr. Irvin, I might say that I have been in it several times and it appears to be——

[fol. 751] A. It started out as a roadside produce stand and it shot.

Q. It appears to be two old buildings. To get into the produce and meat and delicatessen departments you go through an archway.

A. That's right.

Q. Has that always been a grocery store?

A. The west portion of it, the two portions you are talking about, started out as a roadside produce stand with an open front and so forth. A fellow named Mueller, the landlord, built the grocery side, east portion of it for him to operate a grocery department in there. Over the years since we took over in 1951 we started as a partnership and we bought out the meat department, we worked out arrangements with the landlord to close the front in. We have done various things to it. We are getting ready to remodel it and we did Temple City and that set us back and so forth that we haven't been able to touch it since.

Q. You have a service meat department?

A. Yes, we do.

Q. Your equipment and facilities, are they fairly old?

A. Yes, they are.

Q. You say you acquired this in 1951?

A. 1951.

[fol. 752] Q. How old would you say the building is?

A. The west portion of it is probably 30 years old, al-

though it has been rebuilt, a new front put in and all that sort of thing. The east portion is only about, I am guessing now, 16 or 17 years old. I am really guessing.

Q. When you went in there in 1951 and took over this market that was your first store?

A. Yes.

Q. Prior to that you had worked for McDaniel's and Crawford's; is that correct?

A. That's right. Six or seven years with McDaniel's and 14 with Crawford's.

Q. Have you seen other people enter the business, such as you have done, since 1950 after having had prior service with the chains and build their own business?

A. I don't know when Paul Kooimer started, and it must have been sometime since around that time.

Q. He has the ABC Stores?

A. Yes, that's correct.

Q. What chain did he work with?

A. I don't know that.

Q. How about Joe Hughes, are you acquainted with him?

A. Yes, I know Hoe.

Q. He started about 1952, didn't he, after he had been with Thriftmart; isn't that right?

[fol. 753] A. Somewhere in there, yes.

Q. He has built himself a successful chain?

A. A real fine operation, yes.

Q. Are you acquainted with Ted Wood of Pantry Markets?

A. I know the name but I don't know him personally.

Q. Do you know that he was with Alpha Beta until sometime around '54 or so and then started his own single store operation?

A. Yes. He got the Pasadena lease two days ahead of when I bid on it.

Q. I missed that.

A. His first store that he opened on Marengo Street, we both put a bid in for the lease and he beat me in getting it signed by two or three days. Real interesting.

Q. And he has built a very successful chain of about ten stores?

A. As far as I know it seems that way.

Q. Do you know Joe Goodnight of Michael's Markets in Orange County?

A. I know the name, that's all. I do not know him.

Q. Have you made any particular study of grocery conditions in Orange County?

A. I am not as familiar with Orange County as I certainly am with Los Angeles. I can't say that I have, no. Naturally you learn something about the situation in all of [fol. 754] Southern California, and you hear some comments and so forth by people in the trade, particularly salesmen, but I am not really familiar with Orange County.

Q. Have you made any particular study of the Santa Monica or Long Beach area?

A. When you ask me if I have made a study, I run a grocery business, I am also in politics. Obviously I don't have a lot of time for study.

As far as keeping up with conditions, I try to do that. If you ask me if I am an expert on Santa Monica, I certainly am not.

Q. How much time during the week do you devote to your political matters, Mr. Irvine?

A. It varies. We have one meeting every week at least and I put in no less than probably ten hours a week. With budget time coming up it will be much more than that.

Q. I missed that.

A. Budget time coming up it will be much more than that involved.

Q. What stores were in this competitive area of your Garvey Store which you described when you came there in 1951?

A. I believe Crawford's was in operation where Gateway is now. Shopping Bag was not there as I recall it. Von's on Valley Boulevard was not there, Von's Atlantic Square was not there, Alpha Beta was there under another name, Fairway, as I recall it. There is also another market—I [fol. 755] know where Shopping Bag was now. Hillman and Garfield, called Denny's now. It was formerly a small Shopping Bag. Crawford's was there, of course. Shoppers Market down the street was not there. Safeway on the opposite side was there, the opposite corner in a small store. Boy's and Market Basket were over on Valley Boulevard further from Von's and Crawford's.

I think that's about it.

Q. Those were the only stores that were in the area when you started in '51?

A. As I recall it, sir, yes.

Q. I gather now there are quite a few more stores in the area.

A. There are more, yes.

Q. What stores in that area have been out of business other than the Shopping Bag that you mentioned, which became Hillman and Denny's, did you say?

A. By an individual who is named Valdes who used to work at Crawford's Five Point. It is called Denny's Market now, I believe.

What stores have gone out of business in that time?

Q. Yes.

A. There is also another little store down the street, incidentally, that opened here about, I guess, a year ago and [fol. 756] lasted about six months. I don't recall the name. They are on the north side of Garvey and a block off New Avenue. There is another store in there some place. Safeway is closed out at Del Mar, as I say, and for whatever reason I wouldn't know. Safeway is in Monterey Park, I have forgotten that, too.

In the first block west of Garfield on Garvey they have closed that store up. There have been other little mom and pop stores that have changed hands and probably have been some that closed up but offhand I can't recall them.

Q. Let us talk about your store at 2289 West Main Street in Alhambra, Mr. Irvine. When did you acquire that store?

A. '56, I believe.

Q. And from whom did you buy it? You bought the lease, I gather?

A. Yes. From a private individual named Charles Odell, the master lease. He didn't buy the meat department. I bought the meat operation out and the fixtures, I think, from another individual.

Q. In 1960, you say?

A. 1956.

Q. From whom did you buy the Garvey Store? That, again, I guess, was an acquisition of the lease.

A. Let me think about this for a minute. I believe it was [fol. 757] closed up at the time, as far as the grocery was

concerned. The landlord owns the property still has the master lease on it, a fellow named Lipson.

Q. So would you agree with me that when you got your Garvey store in 1951, which was closed, this represented an entry of a new single store operator in the area?

A. Let's put it this way. The meat and produce was in operation and I can't recall whether grocery was in operation or not, but I don't think so. I think it had been closed a week or a month, something like that. I believe the fellow that was in there went bankrupt, Mueller. So when we took it over all we took over was the grocery and then we took over the produce and then later on bought the meat out.

Q. When you took over this No. 2 store on Main Street in Alhambra from Mr. Odell that represented the decline of one of the stores being operated by a single store operator and an increase in one of stores being operated by chains; isn't that right?

A. If you want to call me a chain with two stores like that, you go right ahead.

Q. If the Board of Equalization—

A. I understand the semantics involved.

Q. —on the figures that you referred to in your statement referred to a chain as two or more stores, you caused a decline in the number of single store operators as soon as [fol. 758] you got your second store.

A. I understand. If you put it that way I presume you are right.

Q. I would just have to put it the way the Board of Equalization does, Mr. Irvine.

A. No comment.

Q. What do you consider to be the draw area of your Main Street store in Alhambra?

A. One or two miles. That was an odd situation before we had some new competition move in. It was the only store that probably drew from two and a half miles in some directions. The only competition it had at one time was another small store east on Main, which has since closed up Ralphs way back in Alhambra and a small Safeway at the corner of, I guess, Marengo and Main. And then going west you had to get clear down into El Sereno before you had any competition. North it was an M & M Store run by the

original McDaniel's family on a concession basis. Not very tough in those days.

Q. Is that it?

A. That's it, I think.

Q. This M & M Store you say to the north, which was an M & M Store run by the original McDaniel's family?

A. Yes.

Q. This was taken over by Bud Godfrey's El Rancho [fol. 759] Market, wasn't it?

A. A year or two ago, yes.

Q. And at that time Bud Godfrey's El Rancho Markets consisted of one store up in Arcadia; isn't that right?

A. I think he sold the store he opened in Pomona first and then he opened this one, yes.

Q. And then he took over this old M & M Store and remodeled it and has made a beautiful and attractive store out of it.

A. Yes. He had everything to work with, let's face it, a big building and a real good location.

Q. And he's got a first class operation there?

A. That's correct.

Q. Just east of your main Street Store in Alhambra isn't there a Carpenter's Store?

A. That is the old Safeway I referred to previously.

Q. And that was Safeway in '56 when you came in there? I think Mr. Carpenter testified here—

A. I think so. I am not positive.

Q. I think Mr. Carpenter testified he took the store over in 1959.

A. Yes, I believe he took it over after we opened. It was closed for a while, how long I don't recall.

Q. Mr. Carpenter has a nice little store there, hasn't he? [fol. 760] A. Mr. Carpenter is having a rough time, yes.

Q. You regard that as competition for you?

A. Certainly. Everything is competition.

Q. And just west of you on Main Street there is a small store called the Trade Rite, is there not, or By Rite?

A. Something Rite. I don't recall what it is.

Q. Trade Rite, I think it is. Have you been in that?

A. Not for upteen years, four or five or six.

Q. Do you regard that as competition for you?

A. They are a little competition yes. They have changed hands several times. How many I don't know.

Q. That is a very small store?

A. Yes.

Q. I notice that a new Unimart Discount Department Store is moving in just about a block from you.

A. Has moved.

Q. And they have opened up?

A. Yes, they have.

Q. They have a large supermarket grocery department in this discount house?

A. Grocery as well as meat and produce too.

Q. Has that affected your business?

A. Yes, it has.

Q. How about Gertmenian's Store over there on Com-[fol. 761] monwealth and Atlantic, do you regard that as competition?

A. In some small degree. It has changed hands, as you know, twice and it is up for sale today because he is not making anything.

Q. Pardon?

A. Go ahead. I shouldn't tell tales out of school. Forget it.

Q. Mr. Gertmenian moved into that store sometime in 1960 despite the fact that there was a brand new big and large Safeway Store directly across the street; isn't that right?

A. Yes. I think you could buy the place today from Mr. Gertmenian. For one reason, the competition is too rough to make a living out of it.

Q. I might tell you, Mr. Irvine, we took the deposition of Mr. Gertmenian the other day.

A. That's all right.

Q. In this Star Market which you have there in Alhambra you say the fixtures and equipment are quite old?

A. Well, let me amplify that a bit. Some are and some aren't. Naturally we bought a lot of old equipment and old fixtures. We have in some cases built new ones ourselves and in some cases bought new ones, and in some cases merely patched up and painted and so forth. When you speak of equipment, motors, these are in good shape and

new. We have replaced everything in both stores over the [fol. 762] years, more than once sometimes.

So our operating equipment in that sense is in good shape.

We have both rented and bought frozen food cases and this sort of thing. So it's a conglomerate, actually.

Q. I notice you have your produce displayed in huge boxes. Is that done in that fashion to give the idea of a ranch type market?

A. We have dual motives. One is labor economy and the other is ranch connotation.

Q. How old is this store?

A. You are speaking of the Alhambra store?

Q. Yes, on Main Street.

A. Originally it was opened by Billy Berg, I believe.

If you can tell me how far back that was. I would say it is 25 years old and maybe 30. I recall it when I was first in the grocery business, which would make it somewhere around 30 years.

Q. It gives the impression of being the old drive-in ranch type market.

A. Not ranch, no. This was a certain cycle in the market business. It was just a drive-in, not a ranch concept.

Q. You have very good parking area at this location, do you not?

[fol. 763] A. Limited but it is good what there is of it.

Q. How does that compare with the parking at the Garvey Store?

A. Not anywhere near the same.

Q. Worse or better?

A. Much worse. The adjacency factor is fine, but the total number of stalls is very limited.

Q. In the time since 1956, when you acquired the lease on this Alhambra store on West Main Street, what markets have come into the area and which ones have gone out, if you know?

A. That is a tall order, 1956. You are speaking of changes now or just complete new and complete closures?

Q. There is bound to be some turnover in the grocery business.

A. For instance the M & M is not a new operation, it is a different operation.

Q. That's right. It has become El Rancho. I am really talking about stores that have gone out of business and are not grocery stores now and stores that have come into the business and are grocery stores now.

A. There was a grocery down the street from the Trade Rite that you mentioned that has finally gone out of business. They went through several changes of ownership and no one could make it. They closed up.

[fol. 764] Q. How far west of Trade Rite would that be? Because you get awfully close to Huntington Drive.

A. It is on Huntington but it is in between. I don't know, I would guess that it's six or eight blocks down from Trade Rite. I would be guessing too.

Q. Would that be the Brock's Market over there on Huntington?

A. Which side of the street is Brock's on?

Q. On the north side.

A. No. This would be on the south side of the street. I am sure it is closed up.

A new store went in on Huntington Drive, of course, back in El Sereno further, back two years ago. Von's, of course, have opened up in this last year—time goes by so fast—in Alhambra. Safeway went in at Atlantic and Commonwealth, of course.

Q. That was in 1958, wasn't it?

A. I don't recall, sir. That sounds logical. I think that's all the new stores.

Q. How about Ralphs?

A. Ralphs has been there for umpteen years, merely keeps remodeling every so often.

Q. They were there when you acquired your lease there in 1956?

A. Yes, they were.

[fol. 765] Q. You mentioned three new ones, Von's, which is further east from you, and the Ralphs Store; isn't that right?

A. Two blocks, yes.

Q. And the Safeway which is—

A. One block actually. The Safeway, which is about as far away as Ralphs. You just go another direction. Maybe about as far as Von's. And I think that's about all. There probably are some more. I don't know when Fisher's went

in. I can't recall that one. Huntington Drive—Alhambra Road.

Q. How about that Oneonta Market; is that in your trading area?

A. I don't know anything about it. And that's about all I know about it.

Q. Would you consider that to be in your general trading area?

A. It's on the fringe. It so happens that the streetcar tracks seem to act as a barrier for some peculiar reason, plus the fact that it's in South Pasadena and you get into advertising problems. They have very rigid advertising restrictions. You have these artificial restrictions sometimes.

Q. What stores have gone out in that time in this area?

A. Well, as I say, that one that was further east of the [fol. 766] Trade Rite has gone out.

Q. Do you know the reason why, or anything about it?

A. I just know that nobody can make a living at it, because they tried to sell it to us at one time and I am sure it has changed hands at least three times. Beyond that I don't know.

Safeway, of course, pulled out where Carpenter's is, for good and sufficient reasons of their own I presume. Sercombe went out where Gertmenian's is. He sold out to Gertmenian. Because he got tired of beating his brains out. That I happen to know.

I think that's about all. There may be smaller ones.

Q. One of the new entries which we had earlier mentioned in this connection is this Unimart which is just about a half a block way; isn't that right?

A. It is a little further than that, about two blocks away.

Q. We have referred to your Temple City store. What was the address of that store?

A. It could be 4892 Lower Azusa Road. That address sticks in my memory but I won't bet a nickel on it, frankly.

Q. That is in Temple City?

A. Yes, it is. It is Lower Azusa Road and Temple City Boulevard I believe.

Q. It is right on the corner?

[fol. 767] A. It is right on the corner, yes.

Q. When did you acquire the lease on that store?

A. I honestly don't recall.

Q. Can you fix the year?

A. I am trying to. '57 I would believe, or '8. One of the two. I wouldn't want to be held to that date because I honestly don't recall.

Q. I would hate to have someone ask me what I did last week. My memory is so short.

Who did you acquire that lease from?

A. McDaniel's.

Q. Is that when McDaniel's was getting into financial troubles and starting to unload their stores?

A. Who knows when these things start? I think this is when they were trying to get out of some of their financial troubles, because one of the reasons we didn't make it there was immediately after they sold us the store, they closed it up first and sold the store to us, and added 10,000 feet to their shopping center down the street further and, of course, Fox opened up a new market down on Valley Boulevard. Between the two, why, we saw it pretty well.

Q. McDaniel's, I think you indicated that you worked for them.

A. I worked for the old man McDaniel, before he sold it to Cantor and so forth. I quit just before he effectuated [fol. 768] that sale.

Q. What years were those that you worked for McDaniel's?

A. 1930, I guess, through 1937.

Q. What income were you earning when you left McDaniel's? I think you became manager there, didn't you?

A. Yes. That is a tough one. I think I was making \$35 or \$32.50. I went to work for Crawford's for less money I know. I am pretty sure I was the highest paid man in the chain, which didn't say much. Either \$32.50 or \$35 a week.

Q. Then you went to work for Crawford's first at this store at New Street and Valley Boulevard?

A. Yes, as a clerk, in October. In November they made me manager of the store they had on El Sereno. Next year they made me supervisor. And I stayed supervisor and general manager the rest of the time at Crawford's.

Q. You were general manager until 1951 when you acquired your first store, the No. 1 store?

A. Yes.

Q. What was your income when you left Crawford's?

A. I had a bonus arrangement. It was either \$300 a week or \$333 a week salary plus bonus. I have forgotten which.

Q. Can you give us an idea of what it amounted to annually?

[fol. 769] A. Somewhere around eighteen thousand, I think, as I recall. Yes.

Q. Can you tell us what your investment was in this Temple City store? How much did you pay for the lease?

A. I will tell you how much I lost if that will help you any. That is another tough one. I didn't pay anything for the lease. I paid \$25,000 to McDaniel's for fixtures and equipment, et cetera. Then we had to put some more stuff into it and do a lot of remodeling and add some more fixtures. What that comes to I don't recall. I think it was about another twenty-five thousand we put in there. I would say not counting inventory, roughly around \$50,000.

Q. And in the time you had it I gather you took some depreciation on the fixtures and so forth?

A. Yes, naturally.

Q. Then you sold out that lease and the fixtures and inventory in May of 1961 to Mr. Page and Mr. Wachman.

A. If that is his last name, yes.

Q. Do you recall what you sold it to them for?

A. \$50,000 less—We had to take something off and I forget what it is now. Somewhere around \$48,000, as I recall it.

Q. Have you been in the store since you sold it to them?

A. Not for the past year, no.

[fol. 770] Q. It is now known as Grower's Market?

A. Crower's, C-r-o-w-e-r-'s, for some particular reason. Everybody think it is "Grower's" but it is "Crower's."

Q. They do have a picture of a rooster up there.

A. That's right, that's where they got it.

Q. Since they took it over from you they have put in new fixtures and equipment, have they not?

A. I don't know to what extent, sir. I haven't been in for the last year. I think they still have the same meat cases but I could be wrong. I know they haven't replaced the deli case because I bought it. The motors were in top shape. So how much they have replaced I can't say.

Q. You haven't talked to them so you don't know whether they are looking for a second store now?

A. I haven't seen Page for at least a year.

Q. You don't know whether their gross is better in that store than yours was, I take it?

A. I understand that their gross sales—You are speaking of sales?

Q. Yes.

A. I understand that their sales have now reached the point of our highest point at one time. We found then that the price to get them up there was too high for us to pay. I also know that Page has talked to our produce buyer in the market several times, and not again so much recently, [fol. 771] that they were having a very, very rough go. I think they are finally getting on their feet.

Q. I talked to him too, Mr. Irvine, and he tells me he is doing very well.

A. Yes, I think he is now, and I am very glad for him because they are both nice guys. They have earned it, believe me. When we took it—I don't think I am the best in the business; obviously I don't think I am the worst either.

But when they first—When we first took it over, as I say McDaniel's added 10,000 feet to the shopping center and hired a full-time advertising man and really promoted it and Fox opened the store at the same time. Of course, we had hired management, this sort of thing, which is sometimes that you can't get exactly the thing you want out of it, and a combination of things it was just too tough for us. Whether we would have made it if we had been able to hang on longer I can't say.

Q. You say you had hired management. Do you find that when you are in the store and running it yourself and checking the clerks and greeting the customers you can do a lot better job than a hired manager?

A. I will put it this way. Anyone who can run a small store can run a large store about three times more easily. I have had experience, again I don't know it all by any [fol. 772] means, with Crawford's, a large store operation. You can hire a man and set up the whole organization and delegate supervised operation. As a small operation it is exceedingly difficult to do. You run a small store doing less than 25,000 a week, or even less than 5-, and you have to do everything yourself, and it is very difficult to find somebody who can do it, believe me.

Q. You found that when you got your second store your problems just increased?

A. At that time I had a partner, it made some sense. It so happened that my partner suffered a nervous breakdown and had to get out of the grocery business.

Q. When you got the second store your headaches really increased.

A. We had anticipations then of this being a good store and we thought we would probably close out the Alhambra store if it turned out that way. Unfortunately we did everything at the wrong time and probably missed the boat some place.

Q. Your statement says that you are a member of Spartan Grocers. You also use Smart & Final, do you not?

A. Yes, we do.

Q. Right up the street from your Alhambra store there is a Smart & Final depot?

A. Cash & Carry.

[fol. 773] Q. In which of your stores do you spend most of your time?

A. Monterey Park, because the office is located there, naturally.

Q. Do you have a manager who runs your Alhambra market?

A. Manager for each store.

Q. Can you tell me when you took over this McDaniel's Market, sometimes in '56 or '58?

A. I would have to check that date.

Q. Actually it was in 1960 that McDaniel's—

A. I was going to say I didn't think it was McDaniel's. We didn't have it when the strike was on. The strike was in '58.

Q. The strike was in '59.

A. I am getting mixed up with tax problems. I think that's right, we only had it—

Q. It was in 1960 when McDaniel's started to sell off, late '60 when they started to sell off their stores.

A. That fits. I believe that makes more sense.

Q. And then in 1961 they got into real trouble and went into bankruptcy; isn't that right?

A. They did more than that. They sold us some fixtures they didn't own. It cost us 16 or 1700 a year ago. When I

think of Al Woolen, which I wouldn't want you to repeat, [fol. 774] I wouldn't mind too much.

Q. McDaniel's was a case of a small chain that was doing all right and tried to expand much too rapidly and got into financial difficulties because of overexpansion with inadequate capital; isn't that right?

A. Again I am not familiar with the capital setup. I understand that Cantor had plenty of capital at one time. I think there would be a contributing factor. I think there would be some other reasons.

Q. That is what you read in the trade papers?

A. That is what I heard and knew.

Q. That was true with the Fox Markets. Eddie Fox started Fox Markets after leaving Mayfair and built up a big chain almost overnight.

A. Almost overnight.

Q. Almost overnight, you are right. He acquired the Iowa Park Shops and a number of other single operations and built a very large chain and then he got into financial difficulties in 1961 and '62 and went into bankruptcy; isn't that right?

A. As far as I know, yes.

Q. And those Fox Stores were sold off to a number of individuals and small chains except the nucleus of the bankruptcy were sold to Food Fair; isn't that right?

A. Are you speaking of Fox?

[fol. 775] Q. Yes.

A. Yes. Are you sure that it has been sold to Food Fair? What status they are, I don't think anyone knows except the principals.

Q. I understand the planned re-organization has been approved by the referee in bankruptcy.

A. That seems rather obvious.

Q. They are down to 18 stores at this time. Have you read the same thing about Yor-Way?

A. I am not as familiar with Yor-Way, no. I assume that that was part of their problem, again not all of it.

Let me reiterate, as far as I am concerned, both Fox and McDaniel's were not only those of overexpansion. Fox particularly was—Well, I will put it another way. Maybe you are right, maybe it was expansion, but foolish overexpansion.

sion. He was just acquiring stores to acquire them, very bad stores.

Q. Very bad?

A. Very bad. Some were good and some were very bad.

Q. Ralphs and a lot of single store operators unloaded some real dogs on the Fox Markets; isn't that right?

A. It seems so. They would buy anything, it looks like.

Q. When you acquired this McDaniel's Market, which was in 1960 sometimes, what did you consider to be the trading [fol. 776] area, or the primary draw area of that store?

A. We had a little larger area, around two miles.

Q. Assuming that it is a two-mile draw area, there would be two old Shopping Bag Stores in that area, would there not, one about a mile and three-quarters southeast at San Bernardino Boulevard and Valley Boulevard?

A. South and east. Oh, yes.

Q. And that was quite an old Shopping Bag Store, small?

A. As I recall, yes.

Q. And then about two miles or two and a quarter miles east at Lower Azusa Road and Peck there was another old Shopping Bag Store; isn't that right?

A. Yes.

Q. Quite old?

A. I don't know how old it was. It was obviously not a new one.

Q. And those were the only Shopping Bag Stores then in that draw area at that time; isn't that right?

A. Yes. Except up in West Arcadia, which was beyond our trading area.

Q. That is about three miles?

A. Yes.

Q. And that was another old Shopping Bag Store; isn't that right?

A. Wasn't there a Shopping Bag—Yes, there was, Las [fol. 777] Tunas Drive in Temple City, immediately north of us. Pardon me, I don't think it was there when we took over, now that I think about it. I think it had been bought by an independent operator. I am sure that is correct. Yes, it wasn't there.

Q. A Shopping Bag Store?

A. It used to be a long time ago. I remember now, it was closed out before I took it.

Q. That is a Shopping Bag Store that was sold to a single store operator?

A. Harlos Gross, that's correct.

Q. And right across from Harlos Gross was a Market Basket Store which closed; isn't that right?

A. That's right; that's right.

Q. It is up for lease right now?

A. It has been up for lease for a long time.

Q. You mentioned the two Shopping Bag Stores and a third Shopping Bag Store which was sold to Harlos Gross. Wasn't there an Alpha Beta Store about a mile and a quarter north?

A. Yes. Right up Temple City Boulevard.

Q. And that was there when you came into the area?

A. Yes. They have since remodeled it.

Q. Was there a Gateway Store in there?

A. There is a Gateway back on Rosemead and Live Oak, [fol. 778] I believe, which is still there.

Q. Would you consider that within your two-mile radius?

A. To a certain extent. How much, again it is one of those up and out sort of things.

Q. And there was a new A & P Market, wasn't there, at Las Tunas and Baldwin?

A. No. That came in afterwards.

Q. How about that Lucky Store at Las Tunas just east of San Gabriel?

A. That is recent too. So is the Safeway on San Gabriel. But that is far.

Q. There was a Safeway, was there not, when you came into that market, your Temple City Market? This Safeway at Temple and San Bernardino Road.

A. Where is Valley and San Bernardino Road?

Q. It is about a mile and a half to two miles.

A. East?

Q. East.

A. Beyond the shopping center?

Q. Yes.

A. I don't think so, but I don't honestly know.

Q. Wasn't there an independent single store operator, Key Fair, in that area?

A. Key Fair? In El Monte it is, you mean?

Q. Yes.

[fol. 779] A. Just off—Yes, I think that is the name of it. This was a fellow who owned Commonwealth who sold to Gertmenian back in Alhambra owned this store. He sold it, I think, to the present operator. I think that is the one you are referring to.

Q. And then they remodeled it in 1961?

A. It sounds logical.

Q. Was there a Ralphs at Live Oak and Santa Anita? Would that be outside what you consider your trading area?

A. Yes, that is pretty far out for us.

Q. Are you familiar with the Circle Market at 4376 North Tyler Avenue in El Monte?

A. North Tyler?

Again I have heard the name. I am sure I have been by it. You ask me where it is right now and what it is like I couldn't tell you.

Q. In the time that you were familiar with that area what single store operators went out of business?

A. Well, I am not sure of the name of this market now, but the one I am talking about which Sercombe bought in El Monte, he has gone out of business, which is not a single operation. Market Basket closed their store in Temple City, Shaub's has sold out to Mayfair in Temple City. However, this is after I sold my store. Safeway in Rosemead sold their store on Valley Boulevard.

[fol. 780] Q. Do you know to whom?

A. Bob's, I think it is called, but I wouldn't bet on it. He had a small store there and closed it. Typical part of their operation. I am not familiar with closings out there other than to say that they are no more. That's all.

Q. How about new store openings in that area?

A. Fox, of course, A & P, of course, Alpha Beta remodeled and enlarged, McDaniel's enlarged, Market Basket moved up on Rosemead further, but that is out of our area.

Q. They closed the store in your area?

A. Yes. Went further north. I think that's about it.

Q. Didn't a discount store open up in that general area, Golden Rule?

A. Just after we sold the store, yes.

Q. That has a large—

A. Down on Valley Boulevard in Rosemead.

Q. That has a large supermarket operation?

A. It has a supermarket operation. How extensive it is I don't know.

Q. You haven't been in it?

A. Not since they first opened it. It wasn't too extensive to start with but I understand they have amplified it.

[fol. 781] Q. Can you give us some idea of what your personal net worth was in 1951 when you left Crawford's to go into business for yourself?

A. Well, a partner and I went in together. I had 7,000 capital. Aside from that, you mean?

Q. Yes.

A. It is a difficult question. I went through a divorce about this time. I don't know what the net worth was after that. I imagine another \$10,000 after divorce.

Q. What would you say your net worth is at the present time?

A. That is a good question. It depends on what I can sell my assets for. It doesn't amount to much, frankly.

Q. These assets, your stores and your fixtures and so forth, you have depreciated those over the years, have you not?

A. Yes.

Q. So they might not have a net worth on your books but they have an actual resale value.

A. That is the whole story, as you know. It depends on the desirability of your location, how much business you are doing and what your profit picture shows as to what your fixtures are worth when you go to sell them.

Q. You have no idea what your net worth might be?

A. I really don't, no, sir.

[fol. 782] Q. You have only had the one divorce, I take it.

A. No. I have had two from the same woman, believe it or not. I am a glutton for punishment.

(A short recess was taken.)

Mr. Alsup: Q. What milk do you use in your stores, Mr. Irvine?

A. Knudsen and Whittier.

Q. Is Knudsen a well-advertised brand?

A. Yes, it is.

Q. Do you believe it is as well advertised as Jerseymaid?

A. I don't know what their advertising budget is but it is as well known as Jerseymaid, yes.

Q. Speaking of competition, do you believe that Von's has any competitive advantage in milk over you because of its Jerseymaid connection?

A. Yes, I do.

Q. Will you describe what that is.

A. Well, Jerseymaid, as you know better than I, is set up by a few of the largest chains on a cooperative basis. They have certain standards that you have to meet to join their club, so to speak, and that means distribution per unit, gallonage and so forth. And because of the size of their membership and volume per unit and the relatively simple distributing processes involved therefor they are able to [fol. 783] pass on savings to their members that any ordinary retailer cannot achieve from the ordinary dairy. It is no mistake about that, this is a demonstrable fact.

Q. When Jerseymaid was organized Von's Market Basket, Alexander's and Thriftmart were all quite small chains, were they not?

A. That delves in on the process of relativity. I wouldn't say they were small chains but they were not as large as they are now certainly.

Q. Do you know how many stores Von's had at that time?

A. No, I don't.

Q. Or Market Basket?

A. Not precisely, no.

Q. Or Alexander's?

A. Alexander's probably only had six or seven or eight, something like that.

Q. And there are other cooperative dairies that have been organized since then like Golden Creme, aren't there?

A. That is the only other one that I know of.

Q. Have you sought membership in Golden Creme?

A. When I was at Crawford's Golden Creme approached us. At that time the make-up of it, and so forth, was such that it didn't seem desirable to me. I have not sought membership as an individual, no, because I was forced to go some place else at the time I went in business and I just con-[fol. 784] sidered Jerseymaid—pardon me, Golden Creme beyond our realm, as it were.

Q. The price at which you sell your Knudsen milk is fixed by state law, is it not?

A. Yes. By the dairy industry, but go ahead.

Q. And the price at which Von's sells its milk is fixed by state law?

A. That is correct.

Q. The only ones who can sell milk cheaper are these drive-in milk depots; isn't that right?

A. That's right.

Q. Have they moved into your area at all?

A. Yes. We have one down in South San Gabriel, there is one on South Garfield, the extreme southern portion of the city.

Q. They can sell milk cheaper than any grocery store?

A. Slightly.

Q. This is a development of very recent years?

A. Yes, sir.

Q. And these drive-in milk depots not only sell milk but ice cream and weiners and bread and potato chips and delicatessen items; isn't that right?

A. Everybody is selling everything nowadays, yes.

Q. So far as you know, if Von's had taken the money which is invested in Jerseymaid and put it into Arden Farms or in Knudsen common stock, or into real estate [fol. 785] they might have got just as good a return on their investment as they get out of Jerseymaid; isn't that right?

Mr. Hughes: I object on the grounds of irrelevancy.

The Witness: How could I possibly know? All I know is that they have Jerseymaid and it is the soundest, most efficient possible milk setup from one point of view, but it is certainly the most advantageous to its members. No individual could hope to buy milk as they can. Let's put it that way.

Mr. Alsup: Q. But you don't know whether or not they might have made as much money investing in real estate?

A. One can never know that sort of thing, can they?

Q. Your statement, Mr. Irvine, states that you face very vigorous competition from Von's. That is in Paragraph 13. You have the statement in front of you?

A. Yes, sir.

Q. What Von's Stores give you very vigorous competition?

A. Both of them. The one in Monterey Park called Von's Shopping Bag and the one on Valley Boulevard called simply Von's.

Q. You are not referring to any other Von's or Shopping Bag?

A. Atlantic Square to a certain extent, but it has far [fol. 786] less effect on it than the other two, obviously.

Q. Those are the only two that you refer to in this Paragraph 13?

A. Yes.

Q. I think you told Clive Johnson once, the partner of Mr. Bates here, that competition has been more vigorous from the Shopping Bag Stores because Von's are better merchandisers. Do you recall that?

A. I told him that competition had been more vigorous from the Shopping Bags since Von's had taken it over because Von's are larger and evidently—How will I put it? They are more solid operators than Shopping Bag was at the time, yes.

Q. Have you seen the Shopping Bag financial statements?

A. You mean before—

Q. Prior to the merger.

A. I had seen a Shopping Bag financial statement. But don't ask me what year it was. I couldn't remember.

Q. Their sales had been increasing but their returns, their net had been declining pretty steadily, had it not?

A. Yes.

Q. This was also true of Fox and McDaniel's their sales were going up and their net was going way down; isn't that right?

A. Common experience, yes.

[fol. 787] Q. Von's, on the other hand, had one of the best operating ratios of any chain in the area, did it not?

A. That has generally been true, yes.

Q. You haven't seen any lessening in the vigor of competition in this area since the merger of Shopping Bag, have you?

A. No. It has made it tougher for us, as a matter of fact.

Q. In Paragraph 14 of your statement it says that you would also testify that there have been a number of acquisi-

tions and consolidations in the retail grocery field since 1948. Which ones did you have in mind in that connection?

A. Well, as you well know, this has been a general trend. Von's-Shopping Bag, Alpha Beta-Acme. The disappearance, and again I would have to stop and think, and that is certainly going to take some time, but the disappearance of a number of small group stores, a man owned two or three of four stores and single store operations. Things like your Yor-Way and so forth.

If you ask me to be more specific than that I would say I would have to take some time to recall it. But it's a recognized fact and anybody in the business knows it has been going on for some time. Even Local 770 knows it.

Q. Why do you refer to Yor-Way? It started out in the [fol. 788] fifties after you did and built itself into a fairly large-sized chain, very, very rapidly, did it not?

A. I don't know how rapidly. It would seem fairly rapidly.

Let us make one thing clear again. As you know, it is sometimes with the right connections not too difficult to build something that may be a false effort. But whether it is built solidly or not is another story.

Q. And Yor-Way got into financial difficulties and went into bankruptcy, did it not?

A. I wouldn't know the reason for it.

Q. You referred to the Alpha Beta-Acme merger. That was after Von's-Shopping Bag, was it not?

A. I am not sure. It seems that way.

Q. American Stores, which later became Acme, changed its name to Acme, had not done business in this area before it acquired Alpha Beta; isn't that right?

A. As far as I know.

Q. And this was a case of a change in the competitor, isn't that right, from Alpha Beta to Alpha Beta-Acme?

A. What do you mean by a change?

Q. Well, Acme hadn't done business here before, it just came into the area by acquiring Alpha Beta; isn't that right?

A. It would seem so, yes.

[fol. 789] Q. Can you think of any others? Food Fair, of example, has come into the area by picking up these 18 Fox Stores out of bankruptcy, hasn't it?

A. Yes. Mayfair, of course, has done a great deal of this, as you know.

Q. Would it surprise you, Mr. Irvine, to know that Mayfair has sold more stores since 1947 in this area than it has bought?

A. No, it wouldn't surprise me a bit. I also know that Mayfair has more stores than it had ten years ago too.

Q. Any others that occur to you?

A. Not offhand, sir.

Q. Von's and Shopping Bag were both local chains which did business only in the Southern California area; isn't that right?

A. As far as I know, yes.

Q. And Von's—

A. Excuse me. I think Shopping Bag went a little further than Southern California, did they not? Didn't they have a couple of stores up north? I guess you would still call it Southern California.

Q. I think they had a couple in Lancaster and that is in Los Angeles County. I think they had a couple in San Bernardino County. But that is still Southern California.

A. You are right.

[fol. 790] Q. And Von's Stores were located primarily in the south and west portions of the area, were they not?

A. Originally, yes, that's correct.

Q. And Shopping Bag in the east and in the north section of the area; is that right?

A. Originally that's correct.

Q. And in this area, aside from local chains like Ralphs, Von's, Thriftmart, we have some large national chains doing business, don't we?

A. Yes, we do.

Q. Would you name them?

A. Safeway, A & P obviously.

Q. Acme?

A. Now, yes.

Q. Food Fair?

A. By your statement today. I didn't know it was a fact but I assumed it was going to happen that way.

Q. Didn't you read that in the trade papers?

A. I read something about it real fast and put it down

for later reading and I didn't have time to read the thing in detail.

Q. And we have multi-state chains doing business in this area like Lucky, do we not?

A. Yes, we do.

Q. And Mayfair?

[fol. 791] A. Certainly they have reached that category now, yes.

Q. And we have a large number of smaller chains; isn't that right?

A. That's correct.

Q. How many single store operators would you say there are doing business?

A. I certainly wouldn't know today.

Q. Would you say several thousand?

A. I don't really know. I would assume that there are thousands of them, if you categorize single stores as momma and poppas.

Q. And in this same time you have seen people start out like Hughes Market, Pantry Markets, Shoppers Markets and grow and expand; isn't that right?

A. Yes, sir, there certainly has been some of that done. Some you have mentioned have been good example.

Q. Since 1960, Mr. Irvine, have you seen changes in the form of competition occur? Your statement says that you keep up with changes in marketing conditions.

A. What do you mean by "form," the package, the building?

Q. Well, you have seen discount houses moving into the area in increasing numbers?

A. Certainly.

[fol. 792] Q. This is a very new and very strong and competitive factor that has entered into the area?

A. It is strong and competitive. It is not really anything new. It is just an extension of what the original concept was. Stack them deep and sell them cheap.

Crawford's Modern Village has in one sense been a discount operation since its inception almost. They carry a great number of non-food and various other departments and so forth.

So when you talk about a new merchandising concept, it

isn't really so. It is just a logical extension of what the supermarkets started out to be and sort of got side-tracked.

Q. But we have had more and more discount houses with food supermarket departments since 1960, haven't we?

A. I think we are going to have more yet too.

Q. How about the bantam stores, have you seen them come into the area?

A. Yes.

Q. Since 1960?

A. Yes.

Q. In fairly large numbers?

A. Not so around us, but from the figures there are obviously quite a few.

Q. You have read about them in your trade journals?

[fol. 793] A. Yes.

Q. Speedee Mart, Pronto and Tiny Tim and others?

A. Yes.

Q. And in this same period, Mr. Irvine, have you noticed that more and more liquor stores are selling more and more groceries, milk, bread and canned goods and delicatessen items?

A. Of course. Everyone is finding the same problem. In order to survive you must add volume at any process you can. We are all running faster to stand still, in fact. That is true in a great many lines of business, as you know.

Q. I think there is a liquor store there on Huntington not far from that El Rancho Market. Are you familiar with that?

A. No, I am not. I know there is a store in there some place.

Q. Are you familiar with this so-called Taco-Burger Place over there on Atlantic and Alhambra Road?

A. Yes.

Q. That is within what you would consider your trading area?

A. Yes.

Q. There is an independent meat market in there and then there is a liquor store which sells a large variety of grocery items?

[fol. 794] A. Yes. That used to be a grocery store, incidentally. He couldn't make it and pulled out and just operates the liquor store.

Q. He does quite a business there?

A. On a concession basis, yes. But please note that he pulled out as a grocery store.

Q. I think you have made the point.

A. I am getting tired of receiving all these points all the time.

Q. And these milk depots you mentioned, that is another new form of competition in this field, isn't it?

A. Yes, it is.

Q. Have you noticed that drugstores are selling more and more of the grocery items and the grocery stores are selling more and more health and beauty aids and items sold by drugstores?

A. We are all tarred with the same brush. I agree with you.

Mr. Coyle: I want the record to show that I object to this whole line of questioning.

Mr. Alsop: The line of products is grocery stores and related items.

Q. Mr. Irvine, Paragraph 11 of your statement, which you have before you, states that you would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant [fol. 795] were among the leading firms in the area. Are these the major firms that you refer to in Paragraph 15 of your statement?

A. Would you be a little more specific when you say "refer to"? Refer to in what way?

Q. You state in Paragraph 15, "... if this merger is permitted there will probably be subsequent mergers between and involving the other major chains ..." Are the major chains you refer to in Paragraph 15 the same chains which you list in Paragraph 11?

A. By that I mean this, that if this trend continues it seems to me in this area it is going to become like other areas in the United States. The food industry is going to be dominated fundamentally by a relatively few chains, fewer than we have had in the past. I sincerely believe this. Which ones it will be I can't tell you, of course.

Q. That is not the case right now?

A. It is the case now more than it was ten years ago, twenty years ago.

Q. Do you have any knowledge at all that Von's plans any future merger?

A. Of course not.

Q. Or Ralphs?

A. I am merely speaking in a general sense.

Q. You are speculating?

[fol. 796] A. No, I am not speculating. It is a trend and unless something reverses it it is going to continue, in my opinion.

Q. Do you have any knowledge that Ralphs intends any future merger?

Mr. Coyle: He has already answered that.

Mr. Alsup: I didn't hear his answer.

Mr. Coyle: He answered before to your previous question.

The Witness: I think you are belaboring the point. I have no knowledge of anyone specifically but I am merely commenting that it is my opinion that this trend towards merger and towards consolidation will continue—period.

Mr. Alsup: Q. When you referred to a trend I think you mentioned Alpha Beta, Acme and Yor-Way.

A. That has generally been going on. That is some examples of it.

Q. What others can you think of?

A. Von's-Shopping Bag.

Q. What others?

A. I don't recall offhand. Mayfair is in the process of acquiring by acquisition all up and down the coast, and certainly in this area too. One unit, two units, three units and so forth.

Q. But Mayfair has a policy of selling, hasn't it?

A. Well, naturally. Everyone has a policy of selling their [fol. 797] dogs. Let's face it.

Q. Back in 1958, Mr. Irvine, would you have included Fox as one of the leading firms in the area?

A. By "area," do you mean Southern California?

Q. Los Angeles and Orange County.

A. A while ago you referred to Southern California.

Either we are talking about Southern California or we are talking about Los Angeles County.

Q. I am talking about Los Angeles and Orange Counties in this question.

A. I am not familiar with Orange County. I think Fox was becoming a major factor in this area but I am certainly not familiar with to what degree.

Q. How about McDaniel's?

A. McDaniel's was an intermediate factor, I will call them.

Q. They got up to be a 24-store chain in 1960?

A. Volumewise I still think they were an intermediate factor.

Q. How about Yor-Way?

A. Very small factor I would believe.

Mr. Alsup: I have no further questions.

Cross-examination.

By Mr. Hughes:

Q. Mr. Irvine, in your testimony in answer to some of [fol. 798] Mr. Alsup's questions you went into the draw area of some of your stores, and in particular I refer to your Monterey Park store. Do you have any knowledge of the draw area of the chain stores which you mentioned within your trading area?

Mr. Alsup: I object to the form of the question on the ground that it is confusing and ambiguous. I have no objection to asking about specific stores.

Mr. Hughes: Q. Do you understand the question?

A. I think I do. Do you want to know how far I considered Von's-Shopping Bag's draw areas to stores in my area? Von's had three stores in my trading area. Four when you consider Alhambra, as a matter of fact.

Q. Just referring to the Monterey Park Store.

A. Just referring to Monterey Park.

Q. How far do you believe, based upon your observations of the retail grocery business in Monterey Park, how far do you believe the draw area was of the Shopping Bag Store which competed with you?

A. Two miles.

Q. Does that Shopping Bag Store have a larger parking area than your Star Market?

A. Considerably.

Q. Would this have any effect upon the draw area?

A. You are referring just to the parking lot?

[fol. 799] Q. Yes.

A. Naturally good parking is one asset. The larger the parking lot the stronger the value that asset has as a customer preference factor.

Q. Does Von's-Shopping Bag advertise in a local newspaper in your area?

A. By local newspaper you are referring to the Alhambra Post Advocate? They advertise. Which might be called an area paper in conjunction with their shopping news.

Q. Do you advertise in that paper?

A. No, I do not. I have in the past on a few occasions.

Q. Are you familiar with the circulation of that newspaper?

A. Yes, I am.

Q. What is its circulation, approximately?

A. I think, including their shopping news, it is around 58,000.

Q. How wide an area is that newspaper distributed in?

A. Considering all their additions, so to speak, that covers Alhambra, Monterey Park, not completely Monterey Park, Temple City, San Gabriel, El Monte, I believe portions of El Sereno and South Pasadena, but I am not sure about that.

Q. Would the Von's-Shopping Bag ad in that Alhambra [fol. 800] Post Advocate serve to advertise for Von's Stores beyond your immediate area?

A. I would have to pinpoint the location of the other Von's, but it certainly would. There is a Von's in El Monte, I am sure it would be covered. Let's put it this way. The one ad will certainly take care of all their stores in that area.

Q. You stated in your testimony that since you went into Monterey Park in 1951 Shopping Bag came in and two new Von's Stores; is that correct?

A. One in Monterey Park and one in the perimeter of Monterey Park at Valley Boulevard and Alhambra.

Q. As each chain has entered a market in your area have you made any observation of what happened to your sales?

A. Yes, I have.

Q. What has been your observation as far as the effect on your sales when the first Shopping Bag Store opened?

A. I will be frank I don't recall the impact of that, except it had a strong impact on it. All the openings since that time has generally resulted in a 10 percent decline in sales. The Atlantic Square Store affected us at first, but not as much subsequently. The Valley Boulevard Store affected us at first and the effect has continued.

Q. How far is that Atlantic Square Store from your [fol. 801] store?

A. Somewhere between two and three miles. Two and a half miles possibly.

Q. Concerning your Alhambra store, did you make any observations when the new Von's Store opened in Alhambra?

A. Yes, I did.

Q. What were your observations there?

A. A decline in sales, but I don't recall the exact percentage at this time.

Q. How far was that Von's Store from your store in Alhambra?

A. I am a poor judge of distances. My guess is it's about a mile and a half.

Q. Can you approximate for us the amount of money which you lost in your Temple City operation?

A. At least \$50,000.

Q. You stated in your testimony that you do a certain amount of your purchasing from Smart & Final. Is that the Cash & Carry you refer to?

A. No, no.

Q. It is two different operations?

A. Cash & Carry is operated by the parent wholesale house. We buy from the wholesale house who delivers to our door, of course.

Q. Can you buy as cheaply from Smart & Final as you [fol 802] do from Spartan?

A. Not quite.

Q. What per cent of your purchases do you obtain from Smart & Final?

A. Seventy-five.

Q. Are you referring to Spartan or Smart & Final?

A. Seventy per cent of our purchases are Smart & Final, excuse me.

Q. You buy more from Smart & Final than you do from Spartan?

A. Yes.

Q. What percent do you buy from Cash & Carry?

A. Less than one percent.

Q. To your knowledge is Smart & Final an independent company?

A. Owned by Thriftmart.

Q. Mr. Irvine, you testified in response to Mr. Alsup's questioning that there has been some new type of competition coming in. I ask you if any of your competition is going out, that there are more produce stands in the past than there are today?

A. Yes.

Q. Were there more independent meat markets in the past than there are today?

A. Yes.

Mr. Hughes: That is all.

[fol. 803] Redirect examination.

By Mr. Alsup:

Q. I am a little puzzled about this Von's Store down on Atlantic Boulevard in Monterey Park being a competitor of your Garvey Boulevard store. As you come west on Garvey past your store you first hit a Gateway Market; isn't that right?

A. Right.

Q. That is about a block and a half or two blocks away from your store?

A. Three blocks, yes.

Q. Then you go further west and you find a Shopping Bag Store on Garfield just off Garvey; isn't that right?

A. That's correct.

Q. And you go still further west, quite a way, to Atlantic Boulevard, do you not?

A. Yes.

Q. And just north of Garvey on Atlantic there is this Alpha Beta that you referred to.

A. Correct.

Q. You do not regard that as much competition in your trading area, do you?

A. I regard it about the same degree as the Von's I am referring to at Atlantic Square.

Q. It is just off Garvey on Atlantic.

[fol. 804] A. It is closer but it doesn't have the same things to offer. I will amplify that. Going south from our store our trading area goes back up into the hills, so to speak, and the hills become somewhat quite often the dividing line. But we did pull from over the hill some and so forth. When the Atlantic spread went in we found that some of the people were equal distance, roughly, and were going the other way. Or even those who were closer to us, some of those were going the other way because of the shopping center being there as well.

Q. The Atlantic Square Shopping Center, where Von's is in Monterey Park, they have to go up over the hill past the Kinney Shoe Store a good mile and a half.

A. Or you can go down Garfield and turn over.

Q. In that Atlantic Square Shopping Center there is a Von's and directly across the street there is an A & P, a new A & P?

A. That was built subsequent to that, yes.

Q. And in that same general area there are several single store operations; isn't that right?

A. By "single store," you mean independents?

Q. Yes. A little bit further along.

A. It must be further south. There is one that just changed hands again.

Q. And maybe another block there is a Safeway and [fol. 805] McDaniel's, now Food Giant?

A. Yes. It's a little further than that.

Q. Can you think of any area at all in Los Angeles County or Orange County where the housewife doesn't have a wide choice of different competing stores to choose from?

A. I am sure if I did I would try to open a store there, like everybody else. No, I can't.

Mr. Alsup: That is all.

By Mr. Bates:

Q. Mr. Irvine, before you started into the business for yourself did I understand you to say that you worked for Crawford's for 14 years?

A. That's correct.

Q. You certainly saw the population increase several times in that Crawford's area during that 14 years, didn't you?

A. Yes. Part having gone faster than others, but of course the whole territory has grown.

Q. Then you opened your first store, I believe you said, in 1951.

A. Yes, sir.

Q. Since that time you have seen the population increase very rapidly; isn't that so?

A. Well, let me amplify that. I have lived in Monterey Park most of my life. I have moved out a few times. As a [fol. 806] matter of fact, I lived two blocks from where the store opened, umpteen years ago, '50 to be exact.

This particular area has gone through a change period of changing from single families to the beginning of multiples. Now, the growth in Monterey Park has come from the annexations that we have taken on in the last few years. This area we hope is going to start growing again but it has remained relatively stagnant around the immediate vicinity of our store. The growth has been much slower than the rest of Monterey Park. We call it the older part of town.

Q. Do you recall what the annual gross of your Monterey Park store was in the first year you took it over?

A. No, sir, I don't. It is rather complicated. We didn't have the meat operation. I couldn't tell you that figure now offhand.

Q. Could you approximate that figure?

A. I would be guessing it was somewhere around \$450,000, but I could be wrong as the dickens.

Q. Did it increase in 1952?

A. Yes.

Q. How much did it increase, if you recall?

A. I can't recall that, sir. Again some place in here we acquired the meat market and I don't recall if it was the first, second or third year, to be honest with you.

Q. Do you recall if it continued to increase each year thereafter?

[fol. 807] A. It continued to increase until we reached a certain point. I believe the Shopping Bag opening was the thing that first put the cap on our growth.

Q. What year would that be?

A. I don't recall. I can get these figures for you.

Q. Was it prior to, say, March, 1960?

A. Yes.

Q. You attribute the leveling off point to the incoming new stores in the area?

A. Two factors. One the incoming new stores and one there is a certain saturation point that any store, depending upon its size, its immediate trading area, that it reaches. The larger the store you assume the larger the trading area. For the size we knew, the law of diminishing returns set in. Let's put it that way.

Q. What about the Alhambra store, do you recall what your gross was there the first year you took it over.

A. Usually somewhere around \$400,000.

Q. Did that increase the following year?

A. Yes, it did.

Q. What year did you take that store over?

A. '56 that was.

Q. Oh, yes. Then it increased in '57. How about '58?

A. No. I think that aside from the strike picture, so to speak, I think that it reached a certain stage of growth of [fol. 808] either one or two years and stayed there and come down some since. But I am not clear about the dates.

Q. You say it has come down some since. The strike, by the way, Mr. Irvine, was in 1959. Did you have a good year in 1959?

A. Had a good month in January, yes, naturally.

Q. Were you involved in that strike?

A. I was financially unable to weather a strike. I had no choice but to sign up.

Q. It would be fair to say then that your sales did increase in 1959?

A. If that was the year of the strike, they did, yes.

Q. How about 1960?

A. You are speaking now of the Alhambra store?

Q. Yes.

A. No, I believe not.

Q. Did it decrease?

A. You are going to make me say something that I don't think you want me to. It decreased as soon as the Von's opened the store in Alhambra this year, whenever it was. It decreased when—No, it might have stayed roughly the same, I guess, until the Von's opening. But I am not sure, sir.

Q. It leveled off and stayed about the same until Von's opened their store in Alhambra?

[fol. 809] A. I think that's right. But again I am not positive.

Q. Then it decreased after that?

A. It decreased some, yes.

Q. How much of a decrease?

A. Roughly eight per cent, something like that.

Q. Eight per cent, did you say?

A. I think so, sir.

Q. Did it decrease when El Rancho opened their new store?

A. No. As I recall it, I don't know which came first now, but I am pretty sure that Von's opening did. We felt the definite effect when Von's opened.

Q. In any event you attribute, do you not, the decline to the opening of the Von's Store and maybe others that opened in your trading area; is that correct?

A. I think that is a fair statement.

Q. Isn't that fair to say that that is what you meant in response to a question by Mr. Alsup that you saw no lessening in competition, in fact you said it had been tougher?

A. Let me get that straight again. What did I say?

Q. In response to a question by Mr. Alsup you said, no, definitely there had been no lessening in competition, in fact it had been tougher.

A. We had more competition—We have more competition today, yes.

[fol. 810] Q. Your Temple City store, do you recall what the volume of that store was the first year you took it over?

A. Not the first year, sir, because it was a process of bringing the thing up.

Q. Did you bring it up?

A. We did bring it up. But we paid a price for it we couldn't afford.

Q. What year did you start that store?

A. Those records are better than my memory.

Mr. Alsup. 1960, I think.

The Witness: Thank you.

Mr. Bates: Q. How much did you bring it up percentage-wise, do you recall that?

A. Well, you mean from where it started? After all the store was closed. It had been closed for a month or two, I forget which. We had an opening, of course, which is not normal sales figures. I believe we brought it up from an average of around \$17,000 a week after three months' operation up to as high as twenty-five. I could be mistaken about the figures. Give or take a couple of thousand.

Q. What year did you get it up to twenty-five?

A. In the first year of operation.

Q. That would be '61?

A. Yes, I believe so.

[fol. 811] Q. How about 1962?

A. I sold it in May of 1962.

Mr. Alsup: Your statement says you sold it in 1961, Mr. Irvine.

The Witness: That's true. Yes, that's right.

Mr. Bates: Q. Mr. Irvine, do you see any tendency on the part of Safeway in the metropolitan area of Los Angeles to obtain an exclusive privilege to sell groceries in this area?

A. What do you mean do I see a tendency to obtain exclusive privilege?

A. I am asking you the question. Do you see any tendency on Safeway's part to obtain an exclusive privilege to sell groceries?

Mr. Hughes: If the witness doesn't understand the question—

The Witness: I understand the question. That is like

asking someone if they would like to have a gold mine. In one sense I think everyone has the tendency. Realistically today I suppose Safeway doesn't intend to achieve that goal.

Mr. Bates: Q. Do you see any tendency on the part of Ralphs to obtain such an exclusive privilege?

A. I presume not.

Q. How about Acme? Do you see any tendency on their part to obtain an exclusive privilege?

[fol. 812] A. What do you call a tendency, sir? A desire to achieve that or a realistic knowledge that you aren't going to achieve it but achieve as much as you can?

Q. Is there a trend or tendency—

A. There is a tendency to get all the business that they can get, and this is quite true the bigger they are.

Q. Based on your experience—

A. Is anybody going to get it? No, I don't think anyone is.

Q. That would include Food Fair and A & P, or any other chain including Von's, wouldn't it?

A. I think that is probably true.

Mr. Bates: That is all.

#### Recross-examination.

By Mr. Hughes:

Q. Mr. Irvine, do you believe, based upon your observations that there is a tendency for a group of chains to achieve dominance in the grocery industry in this area?

Mr. Alsup: I object to the question on the ground that it is confusing and ambiguous. What is "a group"?

Mr. Hughes: Q. Do you understand the question? I will rephrase that.

Do you see a tendency on the part of several chains—

Mr. Alsup: The same objection on the ground that the question is confusing and ambiguous.

[fol. 813] Mr. Hughes: I will strike the question.

I would like to have identified as Irvine Exhibit No. 1 the testimony of Roderick A. Irvine.

(The document referred to was marked by the notary public as Irvine Exhibit No. 1 for identification, a carbon copy of which is attached hereto.)

Mr. Hughes: I have no more questions.

Mr. Alsup: I have no more questions.

Mr. Bates: That is all.

(Discussion off the record.)

Mr. Hughes: Mr. Irvine, if it is agreeable to counsel for the parties would you waive signing this deposition which the court reporter will have typed up?

The Witness: Yes.

Mr. Alsup: That is agreeable to us so long as it is understood that it will be filed as his testimony.

Mr. Coyle: It may be, not necessarily it will be. If you want to file it you can file it.

[fol. 813a] IN THE UNITED STATES DISTRICT COURT

Honorable CHARLES H. CARR, Judge Presiding

No. 336-60-CC Civil

**Transcript of Proceedings—June 11, 1963**

Place: Los Angeles, California

. . . . .

[fol. 814] TESTIMONY OF LEO ARTHUR JENKINS

If subpoenaed to testify, Leo Arthur Jenkins would testify as follows:

1. He is the owner of Jenkins Market, 9701 Cortada, El Monte, Los Angeles County, California. This store is a so-called "Mom and Pop," grossing about \$50,000-\$75,000 per year. Last year he left a larger market which he had operated as sole proprietor, and which was located at 9008 East Valley Boulevard, Rosemead, Los Angeles County, California. The Rosemead market had 1959 sales of about \$108,000. Mr. Jenkins has had a total of some 16 years experience in the retail grocery business in the Los Angeles area. His first two years were with Market Basket where he became a canned goods buyer. When he left Market Basket, he and his brother became partners in a grocery store at 1630 Potero Grande, South San Gabriel, Los Angeles County, California. In 1956 he went into business alone at the Rosemead Jenkins Market.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Jenkins, when he operated a larger store, closely inspected all grocery advertising by the major chains as it appeared in the [fol. 815] metropolitan newspapers. He also regularly reviewed grocery advertising appearing in local papers. He subscribed to the "Grocer's Weekly Guide," a booklet similar to the Key Services, and followed the prices of

all the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly read, among other publications, the "Commercial Bulletin" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result, single store operators do not have access to desirable locations in shopping [fol. 816] centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their

own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Orange Empire Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed [fol. 817] by the chains on dry grocery products. He would state that the cooperative does not carry such major perishable products as fresh dairy, meat and produce items. Some of the chains, including Von's and Shopping Bag, also belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the picture presented in defendants' exhibits which show that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.5 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed [fol. 818] the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along

with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for new locations is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's-Shopping Bag."

12. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was one of the largest consolidations of grocery chains in the Los Angeles area in recent years.

13. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocery. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

[fol. 820] DEPOSITION OF LEO A. JENKINS

(Taken on behalf of the Defendants, at 433 South Spring Street, Los Angeles, California, 9:30 a.m., Thursday, April 18, 1963, before Harold M. Leibovitz, C.S.R., Notary Public, pursuant to subpoena and notice.)

Direct Examination.

By Mr. Bates:

Q. Mr. Jenkins, the purpose of this hearing is to give me an opportunity to examine you on your background and experience in the grocery business and to interrogate you on the statement that you have heretofore made to the Government. Do you have a copy of that statement with you?

A. Yes.

Q. I will ask you to lay that on the table and keep it in front of you, Mr. Jenkins, because from time to time I will wish to refer to it and have you read portions of it to refresh your recollection.

A. All right, sir.

Q. The record that we will make here today will in all probability be examined at some stage of this proceeding by the court.

A. I see.

Q. I think it will be more clear to whoever examines it if you will listen to my question and wait until I have [fol. 821] finished before you give your answer. In turn I will try and not interrupt you until you are finished with your answer. If you don't understand any question I put to you please say so and we will rephrase it and if you don't know the answer just say you don't know the answer.

Where is your residence at the present time?

A. 3045 Adelia Avenue in El Monte.

Q. How long have you lived there?

A. Approximately a year.

Q. How long have you lived in Los Angeles County?

A. Since 1950.

Q. Prior to 1950 where did you reside?

A. St. Joseph, Missouri.

Q. When you lived in St. Joseph, Missouri, were you engaged in the grocery business there?

A. Off and on for a while, yes, sir.

Q. Relate your experience in the grocery business in St. Joseph, Missouri.

A. Well, I worked for the Greenhill's Market for a while and then I worked for Joe Cordona for a while, which together would make approximately a year and a half.

Q. In what capacity did you work?

A. I was a clerk.

Q. A clerk?

A. Yes, sir.

[fol. 822] Q. Proceed.

A. Then back to Armour & Company. I worked for Armour & Company for quite a number of years in St. Joe and then I purchased a small market in South St. Joseph and I was there for approximately a year and a half.

Q. How big a market was your South St. Joe market?

A. Small.

Q. Could you estimate the number of square feet?

A. Well, I would say 20 by 40. That is the selling area.

Q. What work did you do for Armour & Company?

A. I was a clerk.

Q. What business were they engaged in, the meat business?

A. The meat business, yes, sir.

Q. After you came to California in 1950 did you engage in the grocery business?

A. Yes, sir.

Q. Where did you first work in the grocery business in Los Angeles County?

A. Market Basket.

Q. What was your capacity there?

A. I was clerk.

Q. How long did you remain with Market Basket?

A. Approximately two years.

[fol. 823] Q. All that time as a clerk?

A. Yes, sir.

Q. Then where did you go?

A. I went to the Boy's Market. I call it the Boy's Market but it was really Shop Rite.

Q. Where was that located?

A. In East L.A.

Q. Where was the Market Basket located in which you worked?

A. On Atlantic and Pomona. It has recently been sold.

Q. You say the Market Basket was called Shop Rite?

A. Shop Rite, yes, sir.

Q. That is a Shoppers Market?

A. I am not certain. I don't believe I can answer that because I didn't work there too long.

Q. What was your capacity there?

A. I was clerk.

Q. How long did you work there?

A. I would say a month or so and then I purchased the market with my brother.

Q. Would this be in 1952 that you purchased the market with your brother?

A. '52 or '53. I am not quite certain.

Q. Where was this market located that you purchased?

A. 1630 Potrero Grande in South San Gabriel.

[fol. 824] Q. How large a market was this?

A. It was considerably larger. We were partners. I would say it was at least three or maybe three and a half times larger than the small market that I originally had in St. Joseph.

Q. Can you estimate its size in terms of square feet?

A. About 60 by 60 I would presume, or thereabouts. Maybe a little more, maybe a little less.

Q. Did it have a parking area connected with it?

A. Yes, sir.

Q. Did you handle meats and produce as well as dry groceries?

A. Yes, sir. Complete market.

Q. Mr. Jenkins, how much was your investment in that market at the time you and your brother purchased it?

A. I really don't recall.

Q. Could you approximate the investment?

A. \$7500.

Q. \$7500?

A. Yes, sir.

Q. What volume of business did you do during the first year in which you operated that market?

A. The first year, together I would say about sixty-five thousand.

Q. Who was your closest competitor?

[fol. 825] A. Beach's, Gateway, Market Basket, and I would say, I am not real certain, but I think Von's had a little market on Garvey almost to Garfield.

Q. How close was Beach's Market to your store?

A. Approximately a mile.

Q. In which direction?

A. North and slightly east.

Q. What other markets were north of your store?

A. Gateway was right next to it.

Q. How far away would Gateway be?

A. It is across the street from Beach's.

Q. That would be about a mile from your store also?

A. Yes, sir.

Q. In which direction was Market Basket located?

A. It was north and west.

Q. How far?

A. Approximately the same distance, maybe a little further.

Q. Von's Grocery, in which direction would they lie?

A. It was just up San Gabriel Boulevard across the freeway. And then there is another one—As I say, I am not quite certain whether it is a Shopping Bag, because the only time I ever came close to it was because I went to the bank at Garfield and Garvey.

Q. Did you consider that your store draw was within [fol. 826] the area of this Shopping Bag Store that you have just described?

A. Oh, yes, undoubtedly.

Q. How far away would that be?

A. It's about a mile and a quarter, approximately the same area.

Q. I believe you stated that Von's Store was across the freeway.

A. It was. It isn't now. It was across the freeway on San Gabriel Boulevard about a block north of the San Bernardino Freeway. But I think they have sold it now to Big Saver, or some market.

Q. That Von's have sold?

A. Well, I don't know if it is Von's or Shopping Bag, but one or the other.

Q. The freeway still is between this store that you have described to us and your store, isn't it?

A. Yes, sir.

Q. Do you draw store trade at your store from the other side of the freeway?

A. Oh, sure.

Q. What do you consider the area to be from which you draw your store trade?

A. Well, you mean the store I have now?

Q. We are talking about this—

[fol. 827] A. 1630 Potrero Grande?

Mr. Hughes: For the record, is that what we have been talking about?

Mr. Bates: Q. We have been talking about your first store.

Mr. Hughes: Potrero Grande.

The Witness: That is what we have been talking about.

Mr. Bates: Q. That is Potrero?

A. Potrero.

Q. What do you consider the trade area in which you draw customers when you operated the Potrero Store?

A. The approximate distance, you mean?

Q. Yes.

A. I would say a mile.

Q. In your opinion is a radius of a mile the approximate area in which the competitor stores draw their trade also?

A. Well, I would say the larger markets do considerably more distance than that.

Q. But insofar as your Potrero store was concerned your customers generally didn't come from beyond a mile; is that correct?

A. I doubt it very much.

Q. How long did you operate this store with your brother?

A. I would say about four years, approximately.

[fol. 828] Q. I believe you told us, did you not, that the

volume of business during the first year in the Potrero store amounted to about \$60,000?

A. That's about right. Of course, that is more or less an estimate on my part. I haven't checked into it. It has been a considerable length of time.

Q. Yes. We would like to have your best approximation. During the second year in which you operated this store did the volume increase?

A. Oh, yes.

Q. How much increase did you experience in the second year?

A. Well, I would say seventy-five thousand instead of sixty.

Q. As your volume increased your profits also increased a little bit, didn't they?

A. Sure, yes, sir.

Q. During the third year of operation of the Potrero store did the volume increase again?

A. No. I think that was about the tops in that store because, as you say, we had a certain area to draw from and we had to become acquainted and the people knew us.

Q. And then the last year in which you operated the store the volume had leveled off and remained about \$75,000; is that right?

[fol. 829] A. It could be a little more, a little less, yes, sir.

Q. Mr. Jenkins, during the four years in which you operated that store you made a constant effort, you and your brother, to increase the sales, didn't you?

A. Yes, sir.

Q. And you made a constant effort to increase the profits, didn't you?

A. Yes, sir.

Q. And it is fair to say that you did both, you increased both the volume and the profits?

A. Yes, sir.

Q. When did you sell this store or dispose of it?

A. I think it was in 1959, approximately.

Q. Can you tell us the amount for which you sold this store?

A. Well, I think the fixtures was around eight thousand and then the inventory about the same.

Q. Did \$16,000 represent your approximate sales price?

A. Well, that is for both of us, you understand, the brother and myself.

Q. I am speaking about the sales price for which you both sold. Would it be about \$16,000?

A. That's about right, yes, sir.

Q. Then you realized a gain on the sale of this store, did you not?

[fol. 830] A. Not too much.

Q. Would it be fair to say it would be the difference between \$7500 that you paid for the store?

A. Well, I put in seventy-five and my brother put in seventy-five.

Q. \$7500 was your individual investment?

A. Oh, sure. It was my original investment.

Q. So that approximately the original price was \$15,000?

A. That's about right, yes, sir.

Q. During the four years that you operated the store I presume you depreciated the fixtures?

A. Oh, yes.

Q. Do you know what the depreciated value of the fixtures was at the time you sold the store?

A. No. But I did have a bookkeeper that took care of that for me and he depreciated it according to the—

Q. What I would like to find out, Mr. Jenkins, is what the capital gain was that was represented to you and your brother on the sale of this store?

A. Oh, I would say a couple of thousand apiece.

Q. When you sold this store what did you do?

A. I purchased a larger market myself on Valley Boulevard and Rosemead.

Q. What was the address?

[fol. 831] A. 9008 East Valley Boulevard.

Q. Did you go into this store with your brother or was this—

A. No, sir, this was my own.

Q. Your own?

A. Yes, sir.

Q. How large was that store?

A. It was 40 by 80, I am almost certain.

Q. Was it a going business at the time you purchased it?

A. Yes, sir.

Q. Do you recall what the purchase price was, approximately?

A. Approximately \$12,500, I believe, fixtures and inventory?

Q. In part you used the capital gain you made from the other sale, together with any profits that you had retained, to purchase this store, did you not?

A. Well, I had to borrow \$8000 from Coast Federal.

Q. But the rest of it is what you had made on your other venture?

A. Yes, sir.

Q. Tell me about the competitors that surrounded you at this location. You had them north, south, east and west, I presume.

[fol. 832] A. Yes, sir.

Q. Who was north of you?

A. Jax Market, Gateway, McDaniel's. I believe that's the closest.

Q. What distance would you say Jax would be from your store?

A. A hundred yards.

Q. And Gateway?

A. Approximately a mile.

Q. And McDaniel's?

A. About the same.

Q. In this location did you consider that your store draw was approximately a mile?

A. I would say so. I knew several people that came from close to the other stores, you know.

Q. Do you recall whether there were any single store operators within a mile north of your store location?

A. I am reasonably certain there was a small market on Mission and at one time there was a small market on Temple City Boulevard and Valley, and another one a block south of Valley and Temple City.

Q. Is that three that you have given me or four?

A. I would say three.

Q. All within one mile from your location?

A. Closer than that. About three-quarters.

[fol. 833] Q. East of your location were there other stores within a mile distance?

A. Well, the Fox Market built a large market about that distance, about a mile distant. I am not sure of my distance.

Q. Just your best estimate, Mr. Jenkins, is all we want.

A. It is more or less an estimate.

Q. Were there any independent grocery stores located east of you within a mile distance?

A. Well, when I first started Bevin's Grocery was there but he had to sell out because he was right across the street from the Fox Market.

Q. Any others that you recall?

A. Well, this little store I was telling you about on Temple City and Valley, I don't know why he sold out but they tore it out too.

Q. South of your location how many stores?

A. South was the freeway and between the freeway and Garvey is the Aerojet and so forth. So there isn't any market down that direction.

Q. How about west?

A. West, when I first purchased the market, Safeway had a store about a block from me. And then there was another—

Q. Let me interrupt you just a moment. You say when [fol. 834] you first purchased the market. Did they dispose of that store or close it up?

A. Yes, sir.

Q. When did they do that?

A. About a year after I started in business. I imagine that was around '57-'57.

Q. Which did they do, close it or sell it?

A. I am pretty sure they closed it and then it was purchased by a fellow named Bob and his partner Harvey.

Q. Would it be fair to say, Mr. Jenkins, that Safeway could not longer afford to operate a store in that area after you moved in?

A. No. I understand they go in for larger markets. They closed all their small stores like that.

Q. How long did you operate this store?

A. Until approximately a year and a half ago.

Q. Tell me again when you bought it.

A. Around 1956, maybe March or April. If I knew you were going to ask I would have checked into it.

Q. Would you say that you operated it approximately six years or five years?

A. No, about four, maybe four and a half.

Q. What volume of business did you do the first year in which you operated this store?

A. Well, as you say, it was a going business and I [fol. 835] would say around, oh, between seventy-five and eighty-five thousand, maybe ninety thousand. It was a going business, had a good man in there.

Q. As you did before, you made a constant effort to increase your sales and profits, didn't you?

A. Yes, sir.

Q. And you did increase your sales and profits?

A. Yes, sir.

Q. I notice from the statement that you gave the Government in the first paragraph that in 1959, this would be about three years after you purchased the market——

A. Yes, sir.

Q. —that you were doing about \$108,000 worth of business.

A. Yes, sir.

Q. Do you recall how much business you did in 1960?

A. Well, approximately the same. I didn't deviate too much. That one year that I had such a large volume the big markets closed for a month and I had a tremendous volume that month.

Q. But during the four and a half years in which you operated this market it is fair to say that you increased both the volume of sales and profits?

A. Oh, yes.

Q. When did you dispose of this market?

[fol. 836] A. As I say, about a year and a half ago.

Q. Who did you sell it to?

A. The Vicari brothers.

Q. What was the sales price?

A. I think I got \$7500 for the fixtures plus the inventory, which in this store was approximately ten thousand.

Q. So you sold for \$17,500 the property for which you paid \$12,500; is that correct?

A. Well——

Q. After having depreciated the fixtures, of course, during that four and a half year period of time.

A. As I recall, I purchased the fixtures at a comparatively low figure because Mr. Ashforth wanted to sell out. He was getting old and he wanted to retire. In fact he died not long ago. So I think that is where I made a little extra money.

Q. But you did, during that four and a half year period, depreciate the fixtures—

A. Yes, sir.

Q. —based upon your cost and so forth.

A. Yes, sir.

Q. Suppose you estimate for us, as near as you can, Mr. Jenkins, what your capital gain was on the sale of this property.

A. Well, I would say I must have gained around, oh, [fol. 837] four to six thousand, wouldn't you?

Q. I have to ask you the question, Mr. Jenkins. I haven't any facts except those that you give me.

A. I am sorry. This is all more or less out of the blue sky.

Q. You think it could amount to as much as \$6000?

A. I would think approximately.

Q. And this \$6000 represented a capital gain profit in addition to the operating profits that you had experienced during the four and a half years you operated the store?

A. Oh, I don't know about that. I had to buy this stuff, you know, to make the inventory considerably over what I had purchased it for. What I paid for what they inventoried and naturally I had to pay for that.

Q. Well, I think you have told us that you increased both the volume of sales—

A. Yes, sir.

Q.—and the profits during the four and a half years that you operated the store.

A. Yes, sir.

Q. And then after you sold the store you sold it for more than you paid for it.

A. Yes, sir.

Q. So that you did have a capital gain in addition to the profits you had already received, didn't you?

[fol. 838] A. Well, I would have to look on my sheets to make sure what the difference would be. But I know I paid income tax on it, so I can look that up.

- Q. When you sold this store what did you do?
- A. I purchased this small market on 9701 Cortada.
- Q. That is in El Monte?
- A. El Monte, yes, sir.
- Q. How big a store is that, the Cortada store?
- A. I would say 20 by 30 would approximately be the selling area.
- Q. Smaller than the East Valley Boulevard store?
- A. Considerably smaller, yes, sir.
- Q. Does it have a parking lot connected with it?
- A. Around the front, yes, sir.
- Q. How many cars can park there?
- A. There is room for about, I would say, five to six if they parked right.
- Q. Did you purchase this store individually or in connection with your brother?
- A. No, no, it's my own store. My wife and I, of course.
- Q. What did you pay for this store?
- A. Let's see now. That is comparatively fresh. I think the store ran about twelve or thirteen thousand. That is stock and inventory. I didn't purchase the building.
- Q. How long have you been operating this store?
- [fol. 839] A. A little over a year and a half.
- Q. Was it a going business when you bought it?
- A. Yes, sir.
- Q. At the time you bought it what was the volume of sales in that store?
- A. Oh, it was around—You see, I bought it in the middle of the year, and the first half was approximately twenty-five or thirty thousand.
- Q. This is the first half of the year when you purchased it?
- A. I purchased it in July.
- Q. What had your predecessor done in the preceding year, if you know?
- A. Well, according to this figure, about the same.
- Q. Then after the first six months were you able to increase the volume of sales?
- A. Well, I had to—You see, he didn't have beer and wine and I applied for and secured a license, and that raised the volume somewhat. And then, too, I inaugurated a sort of delivery service which is quite acceptable to the

general public around there and things like that. I did raise the volume somewhat.

Q. And you made a constant effort to improve both the volume and your profit during the time that you have had it?

[fol. 840] A. Yes, sir.

Q. And you have succeeded in doing so?

A. Yes, sir.

Q. What would you say the volume of the business is at the present time?

A. Oh, I would say it would be around \$1500 a week now.

Q. Does it appear to be getting a little better each week or month?

A. No. That is the funny thing. It stays almost the same invariably. I have a certain locale now, I don't have any big markets close.

Q. What do you believe your draw area to be from this particular store?

A. Well, it is more or less bounded by Rosemead Boulevard and Garvey and the freeway and, say, Potrero Avenue, which, of course, is only about a mile across or a half a mile from me. Due to the fact primarily that most of the people around there are either retired or live in trailer courts or motels, or things like that.

Q. Your draw area, do you believe, would be less than a mile?

A. Oh, yes, I think so.

Q. Would it be a half a mile?

A. I would say a half a mile would be closer than a mile.

[fol. 841] Q. Mr. Jenkins, how do you determine prices at your store?

A. Well, I have always subscribed to the Grocers Guide and I go primarily on the prices that are in that book, if I can.

Q. Do you fix your prices in accordance with the prices then of the Grocers Weekly Guide? I think they call it "Weekly Guide," don't they?

A. When and if I can do.

Q. And those prices are representative of what?

A. Well, shall I give you a specific example, or what?

Q. Yes, go ahead and give me an example of how the Weekly Guide prices are fixed.

A. Say the Del Monte canned foods, the prices are in the book and they are within, say 16 to 20 per cent, based on what the big markets get on it. But when they come down to selling coffee for what it costs me, and even less, why, I can't do that. Do you see what I mean? They sell coffee for my price, what I pay for it, they sell baby food. You know, that makes me so mad I can't see straight.

Q. And in order to make a profit on that you have to increase the price?

A. That's right.

Q. On those items do you maintain your volume of sales?

A. Oh, no, I should say not.

[fol. 842] Q. Your volume of sales on those items——

A. More or less governed by necessity.

Q. I assume in your constant efforts to increase your volume in your sales that you make a study of the area from which you draw your trade, don't you?

A. Well, I try to, yes.

Q. What do you do in making such a study?

A. Well, I talk to the people, naturally, and kid them and ask them where they go and why they haven't showed up and things like that.

Q. Generally that store draw area is the only one that you are interested in; isn't that so?

A. Oh, certainly.

Q. Have you made any study of grocery marketing conditions in Orange County?

A. No, I am afraid not.

Q. Have you made any study of grocery marketing conditions in, say, the Long Beach area?

A. I don't think there would be any percentage of me making a study now since I have more or less isolated it.

Q. Is your answer, no, you have not made it?

A. No, sir.

Q. Have you made any study of the grocery marketing conditions, say in the Santa Monica area?

A. Well, I don't know what you are getting at, but, [fol. 843] no.

Q. As a matter of fact, the only study of marketing

conditions you have made since you have been in the grocery business in Los Angeles is in the immediate area of the stores which you have operated; isn't that fair to say?

A. I am afraid you are right.

Q. Since that is the case, then, of course, you have no knowledge of the competitive conditions or the competitive situations between other grocers in other areas of the County, like Santa Monica and Long Beach?

A. Well, I do know that, well, Hiram's sold out to a big market chain and Iowa Pork Shops and some of McDaniel's, and of course Von's and Shopping Bag.

Q. Those are just general items of interest that you see perhaps in trade papers that you read occasionally?

A. Yes, sir. And Commercial Bulletin and so forth.

Q. On the basis of your continued study of the marketing conditions in your own draw area around the stores which you have operated have you noticed any decline in the number of single or independently operated stores?

A. Yes, sir.

Q. Let us take the Potrero Grande address in South San Gabriel. How many stores went out of business in your area?

A. I really didn't pay too much attention up there be- [fols. 844-845] cause, as I say, I was just getting started and it didn't concern me too much.

Q. You couldn't name any?

A. No, sir.

Q. Let us take the 9008 East Valley Boulevard location and Rosemead. How many stores went out of business or closed up in your draw area at that location?

A. Well, two that I know of. I think I mentioned them before. Bevin's and this little one on Temple City Boulevard and Valley.

Q. You stated to us that the Bevin's Store was closed after Fox moved in across the street.

A. That's right.

Q. I think you stated that you did not know why the other store closed.

A. That's true.

Q. Are those the only two instances that you know in the Rosemead area?

A. Well, the Safeway closed and, of course, this other party purchased the store, of course.

Q. Are they operating it now?

A. Yes, sir.

Q. At the Potrero Street store, El Monte, what is the situation there as to the decline in single store operators?

A. Well, there is two gone out of business since I [fol. 846] have been there in the last year.

Q. Can you name those for us?

A. Mr. Sager closed out about approximately a year ago, completely.

Q. Do you know what his address was?

A. Well, it's on the corner of Adelia and Garvey.

Q. How long had Mr. Sager been operating at that address?

A. I understand—as I say, I didn't know him too well because I was just getting started. But I understand he has been in business there for approximately 25 years.

Q. What age man is he?

A. I imagine he is close to 60.

Q. Did you discuss with him the reason for this closing?

A. No. As I say, I didn't know the man too well.

Q. As far as you know he may just have reached retirement age and wanted to go fishing?

A. Possibly could be. I am not certain.

Q. How about the other store that you mentioned, do you know the people that operated that store?

A. Only by name. I don't believe I was ever in the store but it's a block down from Sager and it is called the Jackson's Market. It is a small market comparable to mine, and he closed the store. Just closed it, that's all.

Q. How long had he been in business?

[fol. 847] A. I am not sure about that. As I say, I have never been in the store. All I know is he closed the market. The salesman was more or less instrumental in letting me know.

Q. You have no information as to the number of single store operators that have closed up and gone out of business in the metropolitan area of Los Angeles since 1950, have you?

A. Well, now, I had a chart that I secured from Mr. Hughes that showed me a decrease of approximately al-

most half of the small markets closing out. I will say that isn't half but I think the figures were around 6500 down to 3800 or something.

Q. Prior to seeing the chart that Mr. Hughes showed you had you made any study of that problem?

A. Well, I kept wondering why so many stores closed out. I do know that there is another little store, Marantz' Market and Boris' Market, and I understand Mr. Lee's closing out and starting a restaurant.

Q. You said you wondered about it. My question was did you make any study concerning that problem before you saw the chart that Mr. Hughes showed you?

A. Well, I just figured they couldn't make it. I really didn't worry too much about that except where it concerned me. I figure if I worked hard enough and did the people right, I would make it all right, and I have.

Q. Then the first information that you had as to the [fol. 848] number of stores that had closed up or declined was when Mr. Hughes showed you the chart; isn't that true?

A. Well, the number, yes. But I did know that considerably few small stores were in operation.

Q. Do you know how many single store operators there were in Los Angeles County in 1950?

A. I believe that chart said around 6500, if I am not mistaken.

Mr. Hughes: Let the record show that is Dick No. 5 that he is referring to.

Mr. Alsop: How do we know?

Mr. Bates: You may develop that, Mr. Hughes, when you examine the witness.

Q. Do you know how many single store operators there were in Los Angeles County in the year 1960?

A. Well, again referring to the chart, as far as I am concerned it is around 4000, 3800, something like that.

Q. As a matter of fact, Mr. Jenkins, the only information that you have concerning the number of stores, either in 1950 or 1960, is what you have seen on the chart shown you by Mr. Hughes; isn't that true?

A. It should be authentic. As I say, I was more or less

concerned in my area and I have told you several that I go out of business.

Q. Mr. Jenkins, your answer wasn't responsive. [fol. 849] am asking about the information that you have

Mr. Bates: Will you read the question to him again.

(The reporter read the pending question.)

The Witness: Yes.

Mr. Bates: Q. Mr. Jenkins, in the 13 years that you have been in the grocery business in Los Angeles County have you made any effort to get into one of the big shopping centers?

A. Twice.

Q. What centers did you make an effort to get into?

A. Well, I tried one in Covina on Grand Avenue, with my brother, and they wouldn't even talk to us because we didn't have a chance. We didn't have the money or what they considered the background.

Q. Who did you talk to?

A. I really don't even know his name now.

Q. Could you give us the name of the center?

A. If I am not mistaken that was way back in, oh, golly '57-'57, something like that. I really don't—I couldn't tell you the fellow's name because, as I say, he just forgot us, you might say.

Q. You don't even know what his connection or official capacity was with the shopping center?

A. He was one of the representatives that was trying to sell the land to certain people.

[fol. 850] Q. Was he a real estate man?

A. I believe he was a real estate man.

Q. Operating for the center owners, perhaps?

A. Well, the way I found out about it was that one of our very personal friends lived on Grand Avenue in a trailer court and I found out that they were going to make a center out there, my wife and I did. So we thought that this would be a good opportunity to get in on the ground floor. But they wouldn't talk to us.

Q. What other effort did you make to get into a shopping center?

A. Well, I was pretty good friend to a fellow that had

two markets, him and his partner, and they were going to split up—I won't mention his name now because he got killed in an accident—but we went out on the Arrow Highway, or rather he did, to contact a market that was going in out there and he came back and told me that they wouldn't talk to us even after taking what I had as collateral, you know. They wouldn't talk to us so I gave up.

Q. In your Paragraph 4, in the statement that you have given to the Government, you state in effect that the shopping centers will not lease to an independent because the landlord wants the name of a big chain in his shopping center as an attraction to other tenants.

A. Well, that is just my opinion. I am not sure about [fol. 851] that. It does look like it, though, because every shopping center has a big market.

Q. Then you have no factual basis for that statement, just speculation on your part; isn't that true?

A. Except where I tried a couple of times and couldn't make it.

Q. Well, you do know, do you not, that a shopping center developer makes a big investment?

A. Yes, sir, I know.

Q. And that he finances the shopping centers by mortgages and assignments of the leases that he makes with tenants?

A. Yes, sir, I realize that. That is why I say I couldn't make it.

Q. You know that a developer needs a tenant with sound finances in order to get financing himself, don't you?

A. Right.

Q. And that when he grants a lease to a lessee it most generally fixes a minimum rent; you know that, don't you?

A. You are exactly right.

Q. And the minimum rent is designed to amortize his investment, pay interest, taxes, insurance and possibly get some profit. You know that, don't you?

A. Yes, sir.

Q. And on top of that he wants a percentage rent, too, [fol. 852] doesn't he?

A. I believe Ed said that in his report to me. But we didn't have a chance, so, as I say, we dropped it.

Q. Have you made any study of the development of shopping centers in general, Mr. Jenkins?

A. No, not since I found out I didn't have a chance, so I gave it up. I didn't have the financial background, as you say, and in the one instance the experience that they deemed necessary.

Q. You never visited the centers during the process in which they were constructing the buildings and so forth and leasing to tenants, have you?

A. Well, only in that one instance and that was for a very short time. We saw where they were—well, in fact I visited the one over on Valley and, I believe, it's Alhambra Avenue. I believe there is a large Von's over there. I visited that in the process of building. In fact they are still building.

Q. You know as a matter of fact, do you not, that the shopping centers very frequently lease to many tenants, if not all tenants, except to grocers and that the grocery is sometimes the last one to go into the center; isn't that so?

A. Well, I imagine Von's was one of the first because they have the first spot, you might say.

[fol. 853] Q. You say that you imagine.

A. I imagine, yes, sir.

Q. As a grocer is it not your opinion that a grocery man would want to know who the other tenants are going to be in the center before he would move in?

A. Well, not because—Well, I didn't have a chance in there and the only one I was really interested in was the grocery man, in a way. So I noticed Von's, naturally. And I commented on the fact that they were close to the Crawford's Market and this and that. That is about the only comments I could make.

Q. Then, in any event, the opinions which you have expressed in Paragraph 4 of the Government statement are based only on these two efforts that you have described to us to get into the center?

A. That's right.

Q. Mr. Jenkins, I will ask you to refer to Paragraph 6 of that statement and read it, please, to refresh your recollection.

A. Yes, sir.

Q. You have stated in effect, and given your opinion in effect, that the chains have an advantage over independent grocers in terms of inventory control because, one, they operate large warehouses; two, they operate large trucking facilities; three, they buy direct from the [fol. 854] producer; and, four, they deliver to their own stores in their own trucks. Will you explain to us what you mean by that term "inventory control"?

A. Well, if the chance comes up to buy a considerable amount of Del Monte products for a big sale, Market Basket or Von's will purchase carloads and store them in their warehouses and bring them to the stores. I have unloaded lots and lots of Market Basket trucks, as you know—helped, I should say—and I know from that that they can pick and choose.

Q. You are a member of Orange Empire, are you not?

A. Yes, sir.

Q. They operate a large warehouse, don't they?

A. Yes, sir.

Q. They own and operate large trucking facilities, don't they?

A. Yes, sir.

Q. And Orange Empire buys direct from the producers, don't they?

A. Right.

Q. And Orange Empire delivers directly to your store, does it not?

A. Yes, sir.

Q. Don't you have the same advantages being a member of Orange Empire that you have described these chains to [fol. 855] have owning all their warehouses, their trucks and so forth? Don't you have exactly the same advantages?

A. Well, I pay warehouse dues, naturally, and if they are going to continue to do business they have to charge me something for this service and delivery, and so forth, that the big markets don't have to do.

Q. You know that the big markets don't run these trucks for nothing, they've got a big investment, haven't they, and they have to hire union drivers?

A. Sure, yes, sir.

Q. And you know they spend a lot of money building these warehouses and operating them, don't you?

A. That's right.

Q. In Paragraph 7, Mr. Jenkins, you state that Von's belong to Jerseymaid.

A. I mentioned Jerseymaid because I knew Market Basket did. Now, I am sorry, I worked for them, but that might be wrong. I am not sure about that. I would like to clarify that because I do know that Market Basket does, because I have unloaded the cases and so forth of milk. And Jerseymaid is their chief supplier.

Q. Then from your own knowledge you don't know whether they do or do not belong to Jerseymaid.

A. You mean Von's and Shopping Bag?

Q. Yes.

[fol. 856] A. No, I don't. I am sorry.

Q. Let us assume for the purpose of the questions I am about to ask you that they belong to Jerseymaid. On that assumption you state as your opinion in Paragraph 7 that in so belonging they have an advantage over single grocery stores. Have you made a study of that problem?

A. Only insofar as their by-products are concerned. I know that milk you can't sell any cheaper than the state says and so forth. But they do have quite a number of by-products that they can discount considerably; isn't that true? I'm sorry, I asked you a question again.

Q. You haven't any idea, have you, what Von's investment in Jerseymaid is?

A. No, sir.

Q. And you haven't any idea what the investment is of any other member of Jerseymaid, have you?

A. Only comments. No, sir, I don't have any.

Q. And from your own knowledge you don't know whether they make a profit in the operation of Jerseymaid or suffer a loss, do you?

A. Well, I read several articles on Ralphs' contention that they make a considerable profit and he would like to cut the price of milk products and so forth. And he owns his own, just like Jerseymaid.

Q. Can a single store operator go out into the [fol. 857] general market and buy stock ownership in Arden Farms?

A. If he's got the money, I imagine.

Q. And can he do the same thing in Carnation Milk Company?

A. You know, I really don't know.

Q. Can't he do the same thing at Foremost Dairies?

A. I don't know.

Q. Let us assume that a single store operator would make an investment in Arden Farms stock in the same amount that Von's would make in Jerseymaid. Have you any idea whether dividends that would be received by the single store operator would be more or less than the profits made by Von's in Jerseymaid?

Mr. Hughes: I object to the question on the ground that this is all irrelevant.

The Witness: I don't believe I could answer that because it doesn't mean anything to me, really. All I know is that they have their own dairy farms and so forth, or delivery service, and Ralph says they can make money on it. So I just assume—now assume that they did make quite a bit of money on it.

Mr. Bates: Then when you state that by virtue of their ownership they have advantages, that is simply an assumption and speculation on your part, isn't it?

A. Just as you made the remark yourself, assumption. [fol. 858] Q. Mr. Jenkins, I am going to show you an exhibit heretofore marked in this series of hearings as Fairbank Exhibit No. 1. Will you examine that, please.

Now I ask you if you remember seeing that exhibit.

A. Comparable, but not the same. It has been quite a while ago. I think it might have been one of those that I left at the market. I didn't pay too much attention because I am not too much on reading charts.

Q. To refresh your recollection, Mr. Jenkins, in Paragraph 8 of the statement you state, and I quote: "He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the picture presented in Defendants' Exhibits which show that in the period between 1950 and 1958 the market share of the eight largest chains in the areas increased . . ." and so forth.

A. That's right.

Q. Now I am asking you if this is the defendants' exhibit to which you referred in that statement.

A. Well, the only reason I agree is because I know when I worked for Market Basket they only had 20 some stores and now they have 40 or 50. And I read in the paper Alpha Beta has grown considerably, and this and that. I merely mention that in reference to this sheet here.

I agreed with him because I figured that this [fol. 859] chart was correct. And although I didn't know the percentage figures I can see that they have grown considerably.

Q. Do you know who the 20 top grocers were in the year 1950 in the metropolitan area of Los Angeles?

A. Well, I would naturally assume that they would be, oh, say Thriftmart and Ralphs, and probably Market Basket—Why? Because I know them from working for them. And I am not real certain who the top were. But I could name a dozen that are top if you want me to.

Q. Name as many as you can.

A. Well, there is, as I say, Market Basket, Von's Shopping Bag and the A & P and the Safeway and Food Giant and Alpha Beta, and I think I mentioned Ralphs. And, oh, I don't know whether All American is one of the tops or not because they aren't in my area. Of course Fox was. I am not sure how big they are now.

Is that enough?

Q. You have named out of 20, eight. Is that all you can recall?

A. There was Raisin's and Hiram's and Unimart—

Mr. Hughes: This is 1950?

Mr. Bates: Yes.

The Witness: 1960 is a long time. As I say, I was just getting started, I wasn't too concerned.

Mr. Bates: Q. Is this all you can recall now, the [fol. 860] names you have given us?

A. I will say that's enough.

Q. Were the top 20 in 1950 the same chains that were the top 20 in 1960?

A. Oh, I doubt it very much.

Q. Did you make any study to determine what the difference would be?

A. Well, more or less the bigger ones taking over the little ones is about the only thing I can see.

Q. You have stated in the statement given to the Government that the market share of the top 20 increased between the period of 1950 to 1958; isn't that correct?

A. Yes, sir.

Q. I wish you would now look at the chart that is before you and tell me what happened to the market share of the top three between the years of 1952 and 1960.

A. Well, this '59, that is probably where they lost a lot of money on that strike. They had a big strike then, you know, and it would take quite a while to make that back up.

Q. Did the market share of the top three increase or decrease between the years of 1952 and 1960?

A. According to this chart they decreased.

Mr. Hughes: I object to that on the ground that the chart speaks for itself.

[fol. 861] Mr. Bates: Q. As you read the chart the market share decreased; is that right?

A. According to this chart, yes, sir.

Q. How about the top four, did their market share increase or decrease between the years 1952 to 1960?

Mr. Hughes: Same objection.

The Witness: It's on the chart, yes, sir.

Mr. Bates: Q. What is it, increase or decrease?

A. It is decrease.

Q. Now examine the top five for the year 1952-1960 and tell me whether their market share increased or decreased.

Mr. Hughes: The same objection.

The Witness: May I ask you—

Mr. Bates: Q. Just answer the question first, please.

A. Decrease.

Mr. Coyle: Now let him ask the question.

Mr. Hughes: Do you understand the question?

The Witness: It is right in the middle of '59. It doesn't go to '60 and there is a sharp increase there. As I say,

I am not too much upon reading charts but it looks like it almost gained what it lost in those three or four years.

Mr. Bates: Q. Based on your continuing study you say that you are in agreement with the market shares as shown on that chart; is that so?

[fol. 862] A. Well, I am afraid I am not——

Mr. Hughes: I object on the ground that he did not say that.

Mr. Bates: Q. Answer the question.

Mr. Hughes: Would you read what you said in Paragraph 8 to yourself.

The Witness: Well, I will say that insofar as the percentages are concerned they are based solely on how the big markets have grown since I have been in business.

Mr. Bates: Q. Mr. Jenkins, you have said that you are in agreement with the picture presented in defendants' exhibits which show the increase in market share of the top nine, haven't you?

Mr. Hughes: Let the record show that Mr. Bates is excerpting and not quoting.

The Witness: I wouldn't know how to answer that. As I say, I just agree to these figures because they more or less bear out my contention that the big markets are growing bigger and the smaller markets are going out.

Mr. Bates: Q. Mr. Jenkins, you have said in Paragraph 8 in your statement, and I will quote: "... he is in agreement with the picture presented in defendants' exhibits which show that in the period between 1950 and 1958 the market share of the eight largest chains in the area increased . . ." and so forth. Are you or are you not in [fol. 863] agreement with that chart before you?

A. I believe the Government figures, yes, sir.

Q. Mr. Jenkins, I would like to point out that the chart that the Government has shown you is a defendants' exhibit.

A. Well, that is what I say, it just looks like it to me.

Q. We, the defendants, prepared that chart. Now I ask you again, are you or are you not in agreement with the figures as shown on that chart?

A. If they coincide with this I would say yes.

Q. Now, the chart which you say you are in agreement with shows, does it not, that the market share of the top nine and the market share of the top 15 and the market share of the top 20 decreased from the years '58 to '60?

Mr. Hughes: I object to that on the ground that the chart speaks for itself.

Mr. Bates: Q. Isn't that so?

A. According to this chart, it shows that, yes, sir.

Q. And the chart which you are in agreement with also shows that the market share of the top three, the top four and the top five decreased from the year 1952 to 1960, does it not?

Mr. Hughes: The witness has already testified that he didn't believe the chart went to 1960.

[fol. 864] Mr. Bates: Will you read for my benefit the question and answer, Mr. Reporter.

(The reporter read the record as requested.)

The Witness: Well, just as I say, this chart takes a terrific upturn right here just before it gets to 1960 and it shows, if you go right across the line, that they made up the deficiency and so forth. Isn't that true according to the chart? That is the way I read it.

Mr. Bates: Q. As a matter of fact, you never have examined any statistics concerning the market shares of the major grocery chains in this area, have you?

A. I have no access to anything like that.

Q. And you never made any study of the market shares of the major grocery chains in this area, have you?

A. Only insofar as the papers show. They make statements that Food Giant gained so much and Market Basket gained so much and Alpha Beta shows a sharp increase and so forth.

Q. Isn't it fair to say, Mr. Jenkins, that you never gave any consideration to the relative market shares of the major chains until you were shown the defendants' exhibits by the Government?

A. Well, it is quite possible, except I do know that they

are getting bigger all the time and I am getting smaller. That's all I can say.

[fol. 865] Q. In Paragraph 9 of the statement you state in effect that you observed the operations of Von's and Shopping Bag prior to the merger. Will you read that paragraph and refresh your recollection, please?

A. Well, insofar as my limited knowledge is concerned, that is absolutely right.

Q. What observations did you make concerning their operations?

A. Well, I do know that they—Now, wait. I am not real sure whether they own that small market when I lived in Monterey Park on Garvey and just off Garfield. But I do know that they did build a great big market just off Garfield and just north of Garvey. So obviously they went up considerably.

Q. You state in the statement that on the basis of your observations that the operations of Von's and Shopping Bag were profitable.

A. Well, it must have been to make that kind of an advance.

Q. Is that speculation on your part?

A. That is speculation, I am sorry to say.

Q. You also state that both Von's and Shopping Bag experienced successful growth and expansion.

A. According to the papers is my only means of knowledge. I have no access to any of their statements.

[fol. 866] Q. Do you know of your own knowledge that Mr. Von Der Ahe, Charles Von Der Ahe, started many years ago as a single store operator?

A. No.

Q. Do you know of your own knowledge that Mr. Rube Hayden started many years ago as a single store operator?

A. I am afraid I don't know the gentleman.

Q. Then you have no personal knowledge whatever concerning the growth and expansion of these two firms, have you?

A. No, no personal knowledge, just from observation and reading is all.

Q. So far as you know the growth and expansion of both of those firms may be just the natural result of years

of hard work on behalf of Mr. Von Der Ahe and Mr. Hayden; isn't that true?

A. In all fairness, quite true.

Q. Your own increasing success is a result of your hard work and attention to your business too, isn't it, over a number of years?

A. You mean from a large store to a small store is an increase?

Q. Such increase as you have made is due to your own efforts too, isn't it?

A. Well, if I have made much of an increase—That's true.

[fol. 867] Q. I wish you would examine Paragraph 10 of the statement, and I ask you if the firms which you named in Paragraph 10 are the same firms that you referred to in Paragraph 13 of the statement.

A. Approximately. Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant. Now, I don't remember mentioning Mayfair although they are quite a large one.

Q. My question is: Are the ones that you have named the same major chains that you are referring to in Paragraph 13 of the statement?

A. It surely looks like it to me.

Q. Very well. In Paragraph 12 you state that since 1948 you could testify there have been a number of acquisitions and consolidations in the retail grocery field.

A. Yes, sir.

Q. Do you distinguish between an acquisition and a consolidation?

A. No. I am afraid I am concerned primarily on their getting together. I have no way of knowing whether they sold or merged or so forth, except through the newspapers.

Q. How would you define an acquisition?

A. Well, when somebody buys out another person and adds it to his holdings.

Q. How would you define a consolidation?

[fol. 868] A. Well, where they more or less get together under primarily the same setup and heads and run the business together.

Q. You have stated that this Von's and Shopping Bag

merger was the largest consolidation in recent years. What is your basis for that statement?

A. Now, that is just my knowledge. I am not sure of that. That is, as you say, more or less supposition. I have no way of knowing whether it is the largest but I do know it is enlargement.

Q. How do you define "largest"?

A. Well, where they have quite a number of stores and then go together with another one that has quite a number of stores. Now, I don't know how many but I do know there is quite a few.

Q. You do know, do you not, that Food Fair has recently acquired a large number of Fox Stores?

A. I heard that, yes, sir.

Q. And you do know, don't you, that American has recently merged with Alpha Beta?

A. American? I know Alpha Beta came up quite a bit, but I didn't know who they merged with, really.

Q. You do know, do you not, that Mayfair has made a large number of acquisitions?

A. They took over Raisin's I know.

[fol. 869] Q. You know that Mayfair took over Raisin's?

A. Was it Alpha Beta or Mayfair that took over Raisin's?

Q. It was Alpha Beta, Mr. Jenkins.

A. Oh, I am sorry.

Q. Then when you say that Von's and Shopping Bag was the largest merger, that is pure speculation on your part, isn't it?

A. It is really.

Q. And you never considered this problem until it was suggested to you by the Government statement; isn't that true?

A. Well, why should he tell me something that wasn't true? There is no point in it.

Q. I will take an early opportunity, Mr. Jenkins, to ask him that question.

Now, Mr. Jenkins, I would like to refer to Paragraph 13 of the statement wherein you state that probably there will be subsequent mergers between major chains and you say that the major chains you referred to are those you named in Paragraph 10. Now tell me what the basis

for your statement is that there is going to be mergers between those major chains that you have named in Paragraph 10.

A. Well, now, these eight or nine I kind of doubt whether they will merge. They might possibly acquire smaller chains, gobble them up, but as far as these big [fol. 870] ones merging, I will take that back if I said it. Quite possible, though. I am not up on that, I don't know.

Q. You have no information whatsoever on it?

A. No, sir.

Q. Just speculation on your part?

A. Just speculation, yes, sir.

Q. You also state in Paragraph 13 that in all likelihood a few grocery chains will dominate the grocery market.

A. They already are.

Q. That is all speculation on your part, too, isn't it?

A. They already are. I even have to regulate my prices according to them mostly.

Q. Are you referring to the ones that you have named in Paragraph 10?

A. Primarily, yes, sir. I think they are the ones that is on my guidebook, if I am not mistaken, along with Von's.

Q. You say you regulate your prices by the prices that are fixed in the guidebook.

A. As nearly as possible, yes.

Q. If it were not for those prices would you sell your groceries for a lot higher price?

A. I doubt it very much. I would strike a happy medium and go according to the general trend.

Q. Then if you wouldn't fix your prices higher, the [fol. 871] fact that market chains fix these prices reported in the guidebook doesn't have any effect on your business, does it?

A. Yes, it does. Because, as I say, when they sell coffee lower than I can buy it, and baby food and sugar and flour, and all the main items that people come in for, why, I can't go along with that.

Q. Mr. Jenkins, in this same paragraph 13 you also state that the merger between Von's and Shopping Bag is a major stride in increasing the market share of the large chains. What do you mean by "major stride"?

A. Well, the more they get together the larger volume and consequently the cheaper they can buy and the more profit they make and stuff like that, I imagine.

Q. And these large chains you refer to are those that you have named in Paragraph 10 you have told us before; is that true?

A. To my limited knowledge, yes, sir.

Q. Was the market share of Safeway increased by this Von's Shopping Bag merger?

A. Well, that is a big outfit, about the second in the nation. I don't imagine it would affect them too much.

Q. You say that the market share of the major chains was increased by this merger. I want you to tell me what effect this merger had on Safeway's market share, or Ralphs market share, or any others that are named in [fol. 872] your Paragraph 10.

A. Well, now supposing Safeway would take over, say, Thriftmart. Wouldn't that increase their market share? That's all I know.

Q. Are you stating that it would?

A. It sure looks like it to me. Of course, as I say, I am not up to this like you are but it sure looks like it to me.

Q. We are talking about the merger between Von's and Shopping Bag.

A. Yes, sir.

Q. And I would like to have you tell me how this particular merger increased the market share of Safeway or any other chains that you name in Paragraph 10.

A. Well, you mean right now. It quite possibly doesn't have anything to do with these big markets at the moment but it could lead to that, don't you think?

Q. Is that your answer, Mr. Jenkins?

A. Yes, sir.

Q. You also state in Paragraph 13 in effect that this merger between Von's and Shopping Bag would accentuate the large chains' advantages. What advantages would be accentuated?

A. Well, they could buy in larger volume and consequently lower price; isn't that true?

[fol. 873] Q. Do they buy at a lower price than you buy from Orange Empire?

A. Absolutely. If they go to the Del Monte people, of course they do. I have to pay a warehouse charge and so forth.

Q. What is the basis for that statement?

A. Well, they have their own. There is no charge whatever. They buy in large quantities and distribute themselves to the large markets.

Q. You state that you have to pay a warehouse charge.

A. Oh, yes. Everybody does that belongs to the co-op.

Q. You don't believe, do you, that the chains operate their own warehouses cost-free?

A. Oh, no. But then at considerably less cost, I presume. As I say, I presume, again.

Q. Well, now, the advantages that you described here, are these all the advantages that you can think of?

A. I wonder if you would clarify that statement somewhat. I don't know just what you are getting at.

Q. You have listed the advantages that you say the large chains have that will be accentuated by this merger. You have told us what these advantages were. Do you think of any other advantages?

A. Well, one thing they don't have to compete against their own self. They go together and compete against [fol. 874] smaller outfits or, as the case may be, a larger outfit in some cases.

Q. Don't you believe that Safeway competes against Von's?

A. Absolutely.

Q. Don't you believe that Ralphs competes against Safeway and Von's?

A. Right.

Q. Don't you believe that Alpha Beta competes against Safeway, Von's, A & P and Ralphs?

A. Sure. But they have all practically the same advantages. I don't have those advantages myself.

Q. Now, Mr. Jenkins, I ask you, didn't these big chains have the same advantages you described before the merger?

A. Well, in a way. But the larger you get the smaller your margin has to be and the greater your profits; isn't that true? That is my assumption. Not being a big shot I don't know.

Q. Whatever advantages, as you have described them, Safeway possessed, didn't they have the same advantages before the merger of Von's and Shopping Bag as they did afterwards?

A. I wouldn't say that. They have probably considerable less cost due to the fact that they don't have to have two presidents or two vice presidents or so forth. They probably have one now of each and that is quite a profit, I presume.

[fol. 875] Mr. Bates: That is all I have.

Mr. Alsup: I have a couple of questions I would like to ask.

By Mr. Alsup:

Q. You testified, Mr. Jenkins, that you worked for Market Basket as a clerk for two years in a store at Atlantic and Pomona?

A. Yes, sir.

Q. You said that was recently sold by Market Basket?

A. Right. McCowan or Cowan Brothers bought it out. I am not real sure. I haven't been down that way for a number of years.

Q. I think you said that Safeway has been making a practice of closing all of its small markets.

A. I know two in the immediate area—three in the immediate area. I will take that back. I knew three in the immediate area that I know of since I have been there.

Q. You mentioned one with respect to Bob and Harvey?

A. Yes, that's all I know about it. All I know is Harvey's and Bob's Meat Market.

Q. Do you know if they have been in the business before?

A. No. I don't know them personally.

Q. When was that?

A. I would say about four, maybe a little less or a [fol. 876] little more. I don't really recall exactly.

Q. Four years?

A. I would say so.

Q. How about the other two Safeway Stores?

A. Well, one of them was down across from the Garfield Theater and they closed out, and I think Firestone took

it over, and the other one was a small store on the corner of Garvey and—I really don't recall the street name, but it was taken over by a freight depot.

Q. I think you started to work in 1952 as a clerk for Boy's Market in East Los Angeles?

A. Yes. That is an independent market.

Q. And then you and your brother purchased that store.

A. No, no. We purchased the store on 1630 Potrero Grande in South San Gabriel.

Q. And this purchase by you and your brother represented a new entry into the market of someone who had not been a store owner before; is that not right?

A. Well, in this area. As I told you, I owned a small place in St. Joseph, Missouri.

Q. Yes. Then you sold the store on Potrero a year and a half ago to the McCary Brothers; isn't that right?

A. Vicari Brothers.

Q. Had they been in the business before?

A. Oh, yes. I understand they had two or three [fol. 877] markets, that is various markets, not the same one, one at a time in the El Monte-Pico area. I don't know, as I say. All I had was just business dealings with them and they purchased the market.

Q. I think you said that you bought your Jenkins Market from Mr. Ashforth; is that right?

A. The one in Rosemead, yes, sir.

Q. You said he was old and getting ready to retire?

A. And he did.

Q. In your experience in the grocery business in this area, Mr. Jenkins, have you seen that occur a number of times to single store operators, when they get old they either retire or sell out to someone else?

A. I would like to enlarge on that statement somewhat. His boy took it over, Al Ashforth, Jr. took it over and was running it for his dad. And he was doing very well, I understand. I am not sure. So that wasn't really the reason except Al wasn't a grocery man, he said.

Q. And if he had not had a son and he wanted to retire he would either have to close the store or sell it to someone else, wouldn't he?

A. Quite true.

Q. How far are you from the Grower's Market on Peck Road in El Monte?

A. Grower's Market?

[fol. 878] Q. Yes. It was formerly the Star Market.

A. I know Star Market, I know what you mean. It's, I would say, three miles.

Q. Have you been in that market?

A. Oh, yes. I used to live within three blocks of it when it was the Star Market.

Q. When it was a Star Market?

A. Yes.

Q. What was your impression of it as a market when you were in there?

A. Well, a nice, clean little market, small comparatively.

Q. Good location?

A. And the location was all right.

Q. Good parking facilities?

A. Yes, sir.

Q. You haven't been in it since it became a Grower's Market?

A. Oh, no. I didn't even know it changed hands, really.

Q. I think you said there have been a number of prior acquisitions here and you referred to Iowa Pork Shops, do you remember?

A. I read about the Iowa Pork Shops had consolidated—

Q. They sold out to Fox?

[fol. 879] A. To Fox; is that right? I didn't know that.

Q. Have you read anything about what happened to Fox in the last two years?

A. I understand that some concern in Philadelphia bought them out or something. I wasn't too concerned because I sold that market, you know.

Q. From your reading of the Commercial Bulletin and other trade papers, Mr. Jenkins, don't you know that Fox got in financial difficulties and went into bankruptcy?

A. Well, I heard rumors to that effect but I discounted it because, as I say, I wasn't too interested.

Q. I think you mentioned that McDaniel's has recently sold out. Haven't you read in the newspapers that McDaniel's went into bankruptcy?

A. No, sir, I haven't. I really didn't know that. All

I know is that they had a beautiful market on Temple City Boulevard in Azusa and I have been in several times and I liked it very much and they seemed to have considerable business. I didn't know that. It must be some other reason.

Q. In your study of the industry have you seen instances where a concern would grow too rapidly with inadequate capital and get into financial difficulty?

A. Quite possible. I am afraid I tried that myself.

Q. In this same period from 1950 to the present time, when you say you observed some concerns going out of [fol. 880] business, have you seen others enter into the business and grow and prosper?

A. The smaller ones you mean?

Q. Well, let us take Joe Hughes of Hughes Markets. Didn't he start in business with a single store after you had started in business here?

A. Just like I told Mr. Bates, I wasn't concerned with the Long Beach, Orange County or Santa Monica area. And, of course, Hughes is a considerable distance from me. I am afraid I am not up on that.

Q. You do know they have been very successful and have grown and prospered?

A. I understand that, yes, sir.

Q. Are you familiar at all with Ted Wood and his Pantry Markets?

A. Pantry Markets? Sure. They are growing quite a bit in Pasadena, yes, sir.

Q. And they started in business after you did, didn't they?

A. I am not sure about that, really. Some people have it, some people don't. I guess I don't.

Q. Are you familiar at all with Joe Goodnight who left Alpha Beta a couple or three years ago and started his own little chain, first with one store?

A. No, sir.

[fol. 881] Q. You say some people have it and some don't. You have nevertheless made a profit out of your business, haven't you?

A. Oh, I have made profit. I live all right but I put in 80 hours a week and so does my wife.

Q. When you say that some people have it some don't,

you have seen many instances, have you not, of people starting off with a single store and growing bigger out of the profits of the business in this area, haven't you?

A. Very small percentage, though. Look at the guys that don't do it.

Q. You name the ones who don't do it.

A. I can name two or three right offhand in my own area, you know. Shall I?

Q. Yes.

A. All right. There is Jackson and the Vicari boys, they say they are not making it. They want to sell out. And the boys that bought my market. I should have clarified that. And Boris' Market went out of business.

Q. Do you know the reason?

A. That is on San Gabriel Boulevard just above Beach's—north of Beach's about two blocks.

Q. Do you know the reason they went out?

A. Well, I understand it was on account of this little chain Thriftmart—no, it wasn't the Thriftmart chain [fol. 882] but a small chain went in this side of the freeway on San Gabriel and Hellman, and they stayed open from six o'clock in the morning until eleven o'clock at night, and he couldn't make it. That is my understanding. My brother lives within two blocks of it and that is the reason I know.

Q. During this same period you have seen new forms of grocery retailing come into the area, haven't you, like the discount houses?

A. Yes. But I understand Unimart belongs to Thriftmart and Golden Rule belongs to Fox. You know, I didn't pay much attention to those.

Q. This is a new form of retailing that has occurred in the last three years, hasn't it?

A. That's true, as far as I know.

Q. You have seen these bantam markets opening up in the area, the Speedee Marts and those?

A. That is one that I was referring to.

Q. That is the one that you were referring to that was opening—

A. On Hellman and San Gabriel Boulevard. I don't know for sure whether that is the name, but it is a bantam market.

Q. And in this same period from 1950 to the present time have you noticed that the liquor stores are adding more and more food products and selling more food products?

[fol. 883] A. Well, they aren't too big so I don't think they can be concerned about them. Really, it is more belly items that people need like bread and milk that you don't raise the price on anyway.

Q. But they are taking more and more a share of the market in bread and milk and grocery?

A. I understand that. Some think like the big markets are taking in even tractors, I understand. Of course, that is more or less a smart remark, you might say. But still it looks like it.

Q. Is your store in a residential neighborhood, Mr. Jenkins.

A. Yes, sir.

Q. It is entirely surrounded by residences, isn't it?

A. Right.

Q. Is that zoned commercially or is that a non-conforming use?

A. I have been there a year and a half but I understand it is residential zone only. I don't know how they ever got a store there if it was, but they have had it there for years.

Q. I hope you have it for years, Mr. Jenkins.

A. Thank you.

Mr. Alsup: That is all.

(A short recess was taken.)

[fol. 884] Cross-examination.

By Mr. Hughes:

Q. Mr. Jenkins, when you spoke of your Potrero store and a \$15,000 purchase price, you didn't purchase the land and the store, did you?

A. Oh, no.

Q. You just had a lease?

A. That's right.

Q. And on the Rosemead store, when you mentioned the \$12,500 cost, that was just for the stock—

A. Stock and fixtures.

Q. That was also a leased operation?

A. Yes, sir. They are all leases.

Q. And your present location is a lease operation?

A. Is also a lease.

Q. Did you make any capital improvements in your Potrero store after you purchased it?

A. Capital improvements?

Q. Did you put any new fixtures in?

A. No, sir.

Q. Did you do any remodeling?

A. Oh, some, but not much.

Q. Did you do any in your Rosemead store?

A. Replace motors and defective boxes, maybe one or two is all. They were all in reasonably good shape. And [fol. 885] this store the same way.

Q. Mr. Jenkins, in your statement and Mr. Bates' examination a reference was made of a study which you made of the Los Angeles metropolitan area and grocery merchandising. I ask you, did you keep up with the grocery industry more in your larger markets than you do today?

A. Before when I had the larger market in Rosemead I tried to because my business up there wasn't confined locally like the one I have now. It was more or less transit trade or people that would come in as they went to the bank and so forth. You see, I had a bank right next door.

Q. Did you do any advertising at your Rosemead store?

A. I started once and I found the boys leaving the pamphlets in sewers and so forth and I discontinued that.

Q. What is the local newspaper in Rosemead?

A. In Rosemead?

Q. Is there one?

A. They had a little, what they call the Rosemead Review, but the main advertising medium was Jack's Market, and I didn't have access to that. It was his and all the rest of the merchants, of course, advertised in it but I didn't. Naturally I wasn't allowed.

Q. Did you read any newspaper advertising while you operated that Rosemead store?

A. Oh, sure.

[fol. 886] Q. By different grocery stores?

A. Oh, yes.

Q. Whose advertising did you follow?

A. Well, primarily the Von's in El Monte, which was reasonably close, and due to the fact that they had a warehouse right up on Lower Azusa, not too far from me. Why I watched their advertising pretty much is because people around that area would go to El Monte to do their shopping because Rosemead didn't have certain stores, like shoe store or Penney's or so forth. And naturally they would stop in at Von's. I am sorry, that is Shopping Bag. But, anyway, if they go down the other direction they would either go to the Market Basket or the Boy's Market, if they didn't go clear on down to the shopping center where, of course, there is another Shopping Bag-Von's.

Q. What newspapers did you read this advertising in?

A. Well, there is the Post Advocate and the Garvey Advertiser and the El Monte Herald. Let me see, what was that other one? Food Mart News and Santa Fe Farms and so forth.

Q. How about the Los Angeles Times? —

A. Well, I read the Herald Examiner more so than the Times. I don't know, I just happened to like it better.

Q. Whose ad did you follow in that paper?

A. I tried to follow most of the big markets to see [fol. 887] what the specials were primarily.

Q. Which stores were covered by the advertising in the Herald Express?

A. Well, in the Herald Express, of course, Von's Shopping Bag is in it, because it was one of the larger markets there, and then Safeway on Valley Boulevard and, of course, the Crawford's Five Points Store were the main advertisers, I presume, in that local paper. Of course, I am sorry, Fox had it too, naturally.

Q. This is the Los Angeles Herald Express?

A. No, I am talking about this El Monte Herald.

Q. Did you read the Herald Express?

A. Well, yes, but they would have almost all of the big markets, you know, like Thriftmart and, of course, Von's and Shopping Bag and the Market Basket and so forth.

Q. Why would they have all these companies advertising?

A. Well, because they are spread out all over the metropolitan area, aren't they?

Q. Does Orange Empire have any publications?

A. Only a bulletin that they send around to their members.

Q. Is there any news matter in the Orange Empire bulletin?

A. Well, only pertaining to the Orange Empire and discounts and rebates and stuff they want you to sell, like [fol. 888] hot specials and all that, you know.

Q. It is strictly business, it is not news matter?

A. Right, it is not news matters.

Q. Did you read the Commercial Bulletin very often?

A. I did at the Rosemead store but I discontinued it down here because I have more or less the same trade.

Q. What type of news matter was contained in the Commercial Bulletin?

A. Oh, it gave all the new items and it told about new stores. And, as Mr. Bates said, the acquisitions and mergers and things. It is a pretty thorough paper. But I discontinued it when I moved down to this store.

Q. Did the Commercial Bulletin ever have stories concerning how successful the chains were or the independents?

A. Oh, yes. But I am afraid I didn't put too much credence in it because, after all, it is their paper, I figure.

Q. But this is a trade journal which you would read in order to keep up with the grocery industry.

A. Sure. The news items and the old items being discontinued and the new stores that were going in and the shopping centers that were on the way and this and that. I knew about the new shopping center going in on Valley and Alhambra, I believe the street is, quite a while before it went in because it came out in the paper. But I think I [fol. 889] found that out from the Post Advocate quicker than I did from the Commercial Bulletin.

Q. Did the Commercial Bulletin ever run news stories on independents going out of business?

A. Not to my knowledge. I don't believe I have ever noticed any.

Q. How about Grocer Weekly Guide, what does that publication contain?

A. It gives the prices of, oh, practically every item in the store. Say it starts out with Ralphs, Von's, Market Basket. I believe it's in alphabetical order right across, and I think there is eight of them that they give all the prices on, what they sell. And the general price and the percentage and so forth, unit cost and case cost and stuff like that.

Q. Does that give the price of those chain stores just in your area or in the whole Los Angeles area?

A. I take the Yellow Grocers Guide, which is prices quoted by Orange Empire. Now, I did belong at one time to Certified Grocers at the Potrero Grande market, but they threw us little fellows out and put us in Spartan where we didn't have quite the selection. They wanted to service the big markets exclusively. So that is my understanding now. I could probably be wrong, but anyway I knew that I got throwed out and put in Spartan so I quit them altogether.

[fol. 890] Q. Did you feel that you were at any disadvantage in Spartan as compared to Certified?

A. Of course. Didn't have anywheres near the selection and they had twice the shortages and so forth, the way I felt about it. Maybe I am wrong. But I felt that way about it so I went to Orange Empire.

Q. What were they missing in their selections at Spartan, what lines?

A. That has been four or five years ago and I don't recall just exactly, but I do know that so many times I ordered certain things and they were out. So I merely presumed that they kept it in Certified because I never had any trouble getting what I ordered there and let the Spartan go. I could probably be wrong.

Q. Did you object to being put out of Certified?

A. When I went down to see Mr. Besthugh, he was the man right there, and I asked him about it and he said, as I say, they were trying to supply the larger markets and they figured they could do a better job supplying us smaller markets from Spartan. And I objected to it. He said, "Well, that will iron out." But I didn't give them enough time maybe.

Q. Were the prices——

A. They were comparable.

Q. How does Orange Empire compare with Certified? [fol. 891] A. Very, very favorably.

Q. Mr. Jenkins, I just want to show you several exhibits which are identified as Dick No. 2 through Dick No. 7 and Fairbank Nos. 1 and 2. I will just ask you if you haven't seen these before.

A. Yes.

Q. Would you glance through all of them, please? Just if you recognize them, Mr. Jenkins.

A. I don't remember this one.

Mr. Hughes: Let the record show that he is referring to Dick No. 3.

The Witness: Yes, I looked at this one all right.

Mr. Bates: The record shows that he is referring to which one?

The Witness: Dick Exhibit No. 4. That is almost comparable to the one you—and No. 5, I have seen it. I don't remember this No. 6. I might have seen it but I don't remember it. I notice 260 closings.

I don't remember this No. 7. Of course, I have seen this No. 1.

Mr. Hughes: Fairbank No. 1.

The Witness: And I don't remember this Fairbank No. 2 offhand.

Mr. Hughes: Q. In your statement when you state that you agree with the picture presented by the Board of [fol. 892] Equalization statistics, you referred to Dick No. 5, did you not?

A. Yes, more or less. As I stated before I am not much up on charts. But I do gather the idea. I mentioned this, I thought it was closer to fifty-eight, but it is 5300 stores and over here down to 3600.

Q. I just asked if you recognized it in connection with that.

A. Yes.

Q. And when in Paragraph 8 of your statement you refer to agreeing with the picture presented in 1950 to 1958, those figures would be the figures represented in Fairbank No. 1, would they not?

A. Yes, sir. Wait a minute. What was that now? Excuse me. I was watching this when Mr. Bates asked me questions in reference to the top three, four, five and so forth.

Q. I asked you to look at your Paragraph 8.

A. Corroborate my understanding, right, and what experience I have had in the area, right. Strike in '59, I don't remember mentioning that, except that that did have quite—That's right, I did mention it. It did have quite an effect on my business for that month.

Q. Mr. Jenkins, has your grocery business been getting larger or smaller over the years?

[fol. 893] A. Smaller. I started out, of course, with a partner which meant that you can't count that. But when I took on a considerably larger store and I did, I think, all right. Of course, maybe that is a matter of contention. But I didn't make it so I bought a smaller store.

Mr. Hughes: I would like to have a copy of this statement entitled "Testimony of Leo Arthur Jenkins" identified for the record as Jenkins No. 1.

(The document referred to was marked by the notary public as Jenkins Exhibit No. 1 for identification, a carbon copy of which is attached in lieu of the original.)

Mr. Hughes: That is all I have.

Redirect examination.

By Mr. Alsup:

Q. Mr. Jenkins, if these charts are inaccurate, if the Board of Equalization, for example, might list you as a closing and a small business going out of business, despite the fact that you sold it to someone else who carried on the business, would you change your opinion?

A. As you say, it is quite possible. But I do know several that went out and stayed out.

Q. You know several. And you know several that came in and stayed in; is that right?

[fol. 894] A. Right.

Q. You mentioned Crawford's Five Points Store.

A. Yes.

Q. How far was that from this store you had?

A. I would say that's two miles. But it's right down Garvey and it's one of the main stores from my end of town, from my locale.

Q. That is run by Mr. W. H. Crawford, isn't it?

A. All I know it is Crawford's Five Points.

Q. Have you been in it?

A. Oh, yes, several times.

Q. It is quite a store, isn't it?

A. Yes.

Q. It is a single store operation?

A. That is why I mentioned even tractors. They have everything in there, I believe.

Q. That is a single store operation?

A. That's right. I understand he has two or three stores but I am not sure. I don't know for sure whether he has the one on New and Valley or not. That is another Crawford store.

Q. And right across from Crawford's Five Points there is a Market Basket, isn't there?

A. Down a block or so. They have a different area.

Q. And about half a mile away there is a Food Giant, [fol. 895] isn't there?

A. In the Sears Shopping Center, yes, sir.

Q. And there is a Shopping Bag about a mile away, isn't there?

A. In El Monte, yes.

Q. Have you heard it said the question is not whether Mr. Crawford can compete with these chains but whether they can compete with him?

A. No, I haven't. But it is quite possible because he is quite a merchandiser.

Q. He is a real operator, isn't he?

A. He certainly is.

Q. And very successful?

A. I wish I had it.

Q. You referred to your store as a bigger store. Actually it was 3200 square feet, wasn't it?

A. It was a pretty big store, that is in my opinion. Naturally it's a small store.

Q. You said it was 40 by 80.

A. About 40 by 80 selling area, yes.

Mr. Alsup: Thank you.

Recross-examination.

By Mr. Hughes:

Q. Mr. Jenkins, even if there were some flaws in some of these exhibits do you still believe the overall picture [fol. 896] from your own experience is that the big are getting bigger?

A. I am afraid I do, yes, sir.

Q. And do you still believe that the independents are at further disadvantages?

A. Yes, sir.

Q. And that there are less independents as years go by in this area?

A. By far.

Mr. Hughes: That is all.

Mr. Jenkins, would you waive signing this deposition if it is agreeable to counsel?

The Witness: Sure. It is immaterial to me. I am just trying to help.

Mr. Hughes: Is it agreeable, Mr. Alsup, and Mr. Bates?

Mr. Alsup: Agreeable.

Mr. Bates: It is agreeable.

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[fol. 897] TESTIMONY OF JAMES E. LEDGERWOOD

If subpoenaed to testify, James E. Ledgerwood would testify as follows:

1. He currently operates the meat counter at Reseda Health Foods Grocery, 18518 Sherman Way, Reseda, Los Angeles County, California. In December 1958, he retired from the grocery business, last operating at the address where he is now employed. This is a 3,000 square foot store which is owned by Mr. Ledgerwood. Before his retirement the gross business of his store fell off from a World War II high of \$30,000 per month to about \$12

to \$15 thousand per month at the time he went out of business in 1958. He was a member of the Board of Directors of Spartan Cooperative shortly before he closed his market which was known as "Ledgerwood's Market."

2. Mr. Ledgerwood operated a grocery store at the Sherman Way address for 32 years before retiring. He would testify that his volume dropped off because the chains came into Reseda since World War II. He did not move away from the chains because he believed they would inevitably saturate the area.

3. In order to keep abreast of competition in the grocery business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertising [fol. 898] grocery prices which his customers are apt to read. Therefore, at the time when he operated his own business he closely inspected all grocery advertising by the major chains as it appeared in the metropolitan newspapers. He also regularly reviewed grocery advertising appearing in local papers. When he was in business, he subscribed to the Black Book and followed the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly read, among other trade publications, the "Commercial Bulletin" and the "Progressive Grocer."

4. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

5. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A [fol. 899] financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store

operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

6. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result fewer grocery stores are needed in the area to serve a comparable number of people.

7. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

[fol. 900] 8. He would also testify that when he was in business he purchased from the Spartan Cooperative (which is now owned by Certified) and this enabled him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Thus they have combined the advantages of Spartan with direct purchasing and a highly developed distribution system. In addition some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid" which gives them advantages over grocery stores which do not belong to Jersey Maid.

[fol. 901] 9. He would also testify that on the basis of his continued study of the retail grocery industry in the

Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

10. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the area, that they were profitable operations which had [fol. 902] experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

11. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

12. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between

Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a [fol. 903] few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 904]      TESTIMONY OF JACK LEVITAN

If subpoenaed to testify, Jack Levitan would testify as follows:

1. He is the president of Jax Market, Inc., a corporation operating a grocery store at 9031 East Valley Boulevard, Rosemead, Los Angeles County, California. This market was incorporated in 1953. Prior to that time Mr. Levitan was the sole owner of this market. It is now a family owned store. He has been in the grocery business for seventeen years. In 1959 Jax Market had sales of approximately \$750,000.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, he closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he

regularly reads, among other publications, the "Commercial Bulletin", "Super Market Merchandising", "Chain Store Age" and the "Progressive Grocer".

3. On the basis of his continued study of retail grocery [fol. 905] merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result fewer grocery stores are needed in the area to serve a [fol. 906] comparable number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an

advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from the Spartan Cooperative and Orange Empire Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Thus they have combined the advantages of Orange Empire [fol. 907] with direct purchasing and a highly developed distribution system. In addition some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid", which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they [fol. 908] played a part in the competitive merchandising of groceries in the area, that they were profitable opera-

tions which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's-Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a [fol. 909] number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles Metropolitan Area.

[fol. 910] TESTIMONY OF ROBERT J. LOGUE

If subpoenaed to testify, Robert J. Logue would testify as follows:

1. He is a partner in Rite-By Market, 2800 West Main Street, Alhambra, Los Angeles County, California. He has been in business at this grocery store for the past twelve years. For the previous twelve years he had been a grocery clerk. In 1959 the sales of Rite-By Market were about \$300,000.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, he closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Key Services and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the [fol. 911] witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not

have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve comparable [fol. 912] number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Spartan Cooperative (a subsidiary of Certified Cooperative) and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of the cooperative with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping [fol. 913] Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles

metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the competitive merchandising of groceries in the [fol. 914] area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been

"cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number [fol. 915] of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 916] TESTIMONY OF MORRIS MALTZ

If subpoenaed to testify, Morris Maltz would testify as follows:

1. He was a partner along with his brother, Sam, in Woodley Market, 7548 Woodley Avenue, Van Nuys, Los Angeles County, California. They operated the Woodley Market for approximately a year and a half. They worked in their father's grocery store near Kingston, New York for fourteen years and have each had about 22 years experience in the retail grocery business. The gross sales of Woodley Market were about \$359,000 from June 1960 to December 1961.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. Maltz closely inspected all

grocery advertising by the major chains as it appeared in the metropolitan newspapers. He also regularly reviewed grocery advertising appearing in local papers. He subscribed to the Key Services and followed the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly read, among other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age," and the "Progressive Grocer."

[fol. 917] 3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1961 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that a single store operator cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result, single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result, fewer grocery stores are needed in the area to serve a comparable [fol. 918] number of people.

6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and

Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of Certified with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery [fol. 919] stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.5 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the

competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

[fol. 920] 10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's [fol. 921] and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocery. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

## [fol. 922] TESTIMONY OF GEORGE MATSUMURA

If subpoenaed to testify, George Matsumura would testify as follows:

1. He is the owner and operator of the Florentine Food Market, 6811 S. Western Avenue, Los Angeles, California. Together with his wife and children, he has operated this store for approximately the past five and one-half years. Prior thereto, he was in the employ of various produce merchants for approximately fifteen years. In 1959, the Florentine Market had sales of about \$100,000; in 1960, sales dropped to \$75,000; in 1961, sales dropped to about \$70,000. Mr. Matsumura believes that the 1962 sales amounted to approximately \$65,000, although his books are presently in the hands of his auditor.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, he closely inspects all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the "Grocers Survey," a pricing publication similar to the Kay Services, and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among [fol. 923] other publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age," and the "Progressive Grocer."

3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that they confirm his own observations. He would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-

known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

[fol. 924] 5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result fewer grocery stores are needed in the area to serve a comparable number of people.

[fol. 925] 6. The witness would testify that single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and Shopping Bag Food Stores, operate large warehouses, are serviced directly by railroad shippers at those warehouses, and operate large trucking facilities. As a result, they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that the cooperative does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution system. Thus, they have combined the advantages of cooperatives with direct purchasing and a highly developed distribution system. In addition, some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named

"Jersey Maid," which gives them advantages over grocery [fol. 926] stores which do not belong to Jersey Maid.

8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the eight largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the nine largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the fifteen largest chains increased from 38.4 per cent to 50 per cent; and the market share of the twenty largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis; that they played a part in the competitive merchandising of groceries in the area; that they were profitable operations which had experienced a history of successful growth and expansion. He would state [fol. 927] that they were two of the largest chains in the area.

10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair, and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been a number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's [fol. 928] and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

14. He would state that if this merger of Von's and Shopping Bag is permitted, there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocery. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

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[fol. 929] TESTIMONY OF SPENCER L. MCKERNAN

If subpoenaed to testify, Spencer L. McKernan would testify as follows:

1. He is the President of Bauer-McKernan, Inc., doing business as Garfield Markets. This corporation operates two grocery stores in the Los Angeles area. One store is located at 4602 San Fernando Road in Glendale and the other is in Santa Maria. The 1959 sales of the corporation were about \$160,000. Mr. McKernan has been in the grocery business for approximately 26 years.

2. In order to continue in business, a grocery retailer must keep well informed on every change in marketing conditions in the Los Angeles metropolitan area. He must be aware of all advertised grocery prices which his customers are apt to read. Therefore, Mr. McKernan closely inspects

all grocery advertising by the major chains as it appears in the metropolitan newspapers. He also regularly reviews grocery advertising appearing in local papers. He subscribes to the Black Book, a publication similar to the Key Services, and follows the prices of all of the major chains appearing in those booklets. In keeping abreast of the retail grocery trade generally, he regularly reads, among other trade publications, the "Commercial Bulletin," "Super Market Merchandising," "Chain Store Age" and the "Progressive Grocer."

[fol. 930] 3. On the basis of his continued study of retail grocery merchandising in the Los Angeles metropolitan area, the witness would testify that in the period since 1950 the number of single store grocery retailers operating in the area declined. When shown the Government exhibits prepared by the State Board of Equalization, he would state that this lessening in the number of independent grocers has been obvious to him as a result of his observations.

4. He would testify that single store operators cannot get into the more desirable shopping centers. It is a well-known fact in the industry that the major developers will not lease a shopping center location to anyone but a major chain. This is because only these chains have Triple A financial status and because the landlord wants the name of a big chain store in his shopping center as an attraction to other tenants. As a result single store operators do not have access to desirable locations in shopping centers. On the other hand, most of the new openings, particularly in the new shopping centers, have been made by the chains with Triple A financial status.

5. He has observed that the decline in the number of grocery stores in the area also arises from the increasing size of supermarkets and their large, continually expanding dollar sales. The large supermarkets today serve many more people than they did in the past. As a result fewer grocery stores are needed in the area to serve a comparable [fol. 931] number of people.

6. The witness would testify that a single store operators and small chains do not have their own highly developed distribution system. He would point out that he has observed that chains, such as Von's Grocery Company and

Shopping Bag Food Stores, operate large warehouses, and operate large trucking facilities. As a result they are able to buy in heavy volume directly from the producer and deliver the product to their stores on their own trucks. This gives chains, such as Von's and Shopping Bag, an advantage over independents and small chains in terms of inventory control.

7. He would also testify that he purchases from Certified Cooperative and this enables him to get certain of the advantages, such as quantity discounts, enjoyed by the chains on dry grocery products. He would state that Certified does not carry such major products as dairy, meat and produce items. However, he would testify that large chains, such as Von's and Shopping Bag, belong to cooperatives but have decreased their purchases voluntarily when they developed their warehousing and distribution systems. Thus they have combined the advantages of Certified with direct purchasing and a highly developed distribution system. In addition some of the chains, including Von's and Shopping Bag, belong to a dairy cooperative named "Jersey Maid," which gives them advantages over grocery stores.

[fol. 932] 8. He would also testify that on the basis of his continued study of the retail grocery industry in the Los Angeles metropolitan area, he is in agreement with the defendants' exhibits showing that in the period between 1950 and 1958 the market share of the 8 largest chains in the area increased from 33.2 per cent to 39.0 per cent; the market share of the 9 largest chains increased from 34.3 per cent to 41.7 per cent; the market share of the 15 largest chains increased from 38.4 per cent to 50 per cent; and the market share of the 20 largest chains increased from 40.5 per cent to 54.4 per cent. When shown the tables prepared from the Bureau of Census reports by the Government economist, he would testify that these figures also corroborate his own understanding, based upon his experience, of the trends in the area. He would further state that the strike in 1959 definitely had an adverse effect on the sales of the largest chains.

9. He would state in his testimony that he observed the operations of Von's and Shopping Bag prior to the merger. He would testify that both of these chains advertised extensively on an area-wide basis, that they played a part in the

competitive merchandising of groceries in the area, that they were profitable operations which had experienced a history of successful growth and expansion. He would state that they were two of the largest chains in the area.

[fol. 933] 10. He would state that Von's and Shopping Bag, along with Ralphs, Safeway, Market Basket, Thriftmart, Alpha Beta, Mayfair and Food Giant, were among the leading firms in the area.

11. He would testify it is common knowledge in the grocery industry that Von's and Shopping Bag have operated as one chain since the merger in March 1960. The two firms now have a single management; their warehousing facilities have been combined; their advertising is consolidated; the search for a new location is now the responsibility of one organization instead of two; the inventory in the stores has been adjusted with the result that the stores of both firms now carry the same lines and the stores are known as "Von's & Shopping Bag."

12. He would testify that he is aware of the recent statement by Mr. Theodore A. Von der Ahe, the president of Von's, that the competition which Von's faces has not been "cut throat" or "devastating" and that there are no "intense price wars." He would testify, however, that he faces very vigorous competition from Von's.

13. He would also testify that there have been number of acquisitions and consolidations in the retail grocery field since 1948. He would state that the merger between Von's and Shopping Bag was the largest consolidation of grocery chains in the Los Angeles area in recent years.

[fol. 934] 14. He would state that if this merger of Von's and Shopping Bag is permitted there will probably be subsequent mergers between and involving the other major chains, and in all likelihood it will develop that a few large grocery chains will dominate retail grocery distribution throughout the Los Angeles metropolitan area. This merger is a major stride in increasing the market share of the large chains and it will accentuate the large chains' advantages over the small grocer. The merger of Von's and Shopping Bag will have the effect of substantially lessening competition and tending to create a monopoly in the sale of groceries and related products in the Los Angeles metropolitan area.

